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THE CONSUMER INTEREST

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FORWARD

Over the past seven years we have attempted and have
experienced difficulty in delineating the unique significance
and the scope of the rising tide of consumer consciousness and
political activity. In any specific instance the reason for
consumer concern about a given problem, be it individually
activated problems in the marketplace or the general concern of
a consumer advocacy group, is easy to understand. Fitting this
concern into the scope of political and economic activity which
occurs in as outspoken and politically active a society as
Canada is more difficult. This is particularly so at the margin
where we have perceived the consumer interest being in fact the
public interest.

Consumer activist groups appear to have a difficult problem
in defining what their role in the advocacy process should be
and the range of activity which they should pursue. In Canada
it appears to be an ad hoc approach to legislation which has as
its objective the protection of the consumer interest.

The seeds of this study are contained in Chapter III of the
report on Consumer Interest in Marketing Boards, published in
Ottawa by Consumer and Corporate Affairs Canada, in 1974. In
that study we had to define the consumer interest in order to
evaluate the effects of marketing board regulatory activity on
that interest. Then, and in our readings subsequent to its
publication we had been looking for a more precise definition of
the consumer interest but have not found one. To date this is
the first concerted attack we have found on defining that
interest in its many dimensions.

We started this book with the goal of defining the consumer interest to assist policy makers and consumer activists in understanding what the concept was about. Halfway through the second draft we enlarged on this goal by including a second goal; ~~the~~ outlining the dimensions of the process of having the consumer interest represented in the process of governance and in the market place. By so doing we hope that the book may be of help in the advocacy process as well as in courses in political science, law and consumer activities where consumerism is studied.

We want to thank Dr. John Evans, Director, Consumer Research Branch at Consumer and Corporate Affairs Canada, for supporting the writing of this report. He contributed in more than just a monetary sense, especially by allowing us to look in breadth at the problem. The division of labour in the project started with Mr. (now Dr.) Abdul Wahab, a doctoral candidate at the University of British Columbia, spending the summer months of 1976 performing a detailed literature review and writing up the results of his work in September of that year. He was senior author of the first draft of this book. Little of the original remains but our gratitude is nonetheless not diminished for his herculean labours over that three months.

We took Dr. Wahab's basic document, did some restructuring, rewriting, added some research (especially in social choice decision), and came up with the first draft of this book which was published by the Consumer Research Branch, Consumer and Corporate Affairs Canada under the title of Defining the Consumer Interest, Consumer Research Report No: 1,

February 1977. We have significantly reworked that draft, especially in the areas of law, decision making, group behaviour and political science.

This draft of the book had as its subgoal the structuring and presentation of a literature review, our interpretation of that literature from the consumer interest vantage point, and an interrelationship of these ideas in a final chapter which we could distribute to experts for critical review. All this was in anticipation of publication under the joint auspices of The Consumer Research Branch of Consumer and Corporate Affairs Canada and the Institute for Research on Public Policy in Montreal.

This second draft is receiving limited circulation. It is being sent only to critical reviewers in the Spring and early Summer of 1978. We plan to take the advice from these reviews to make the changes necessary for publication in late 1978.

In closing, an early thanks to the reviewers for their comments on this drafts, to Dr. W.T. Stanbury, the dynamic and enthusiastic Executive Director of the Institute for Research on Public Policy, for his encouragement and advice, and, once again, to Dr. John Evans for starting and maintaining the project over the past two years.

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Vancouver

February 1979
~~May 15, 1978~~

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CHAPTER I

TOWARDS DEFINING THE CONSUMER INTEREST

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INTRODUCTION

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In today's increasingly pluralistic society, in what appears to be a more formal and structured balancing of the interests of competing groups in social, political and economic decisions, consumers and consumer action groups are pressing to have the "consumer interest" recognized and protected.

The range of situations in which at least some consumers believe they have interests which need consideration vary from the desire to have prices and ingredients prominently displayed on a can of string beans to debates on the environmental impact of a supersonic jet airplane on their quality of life. The plethora of situations which have fallen under the aegis of "consumer interest" in the past and which may be so classified in the future may be infinite. Because this interest appears to be so broad many people, politicians, government officials, business persons, even consumers and consumer advocates, have problems in differentiating the "consumer interest" and the equally ill-defined but commonly used "public interest".

Purpose

The purpose of this book is to provide a clarification of the meaning, the scope, and the dimensions of the consumer interest. The task is not as trivial as it may first appear, especially to those who, as consumer activists or advocates or as business persons or as representatives of government, have had to delineate the difference between the "consumer" and the "public" interest. The consumer activists are sure that there is a difference. There is sufficient awareness that there is a "consumer" interest that all the provinces and the federal government have departments that are charged to represent these interests.

The *raison d'être* for the book is to provide operational direction for those who have to represent that interest.

Background

As early as 1941 Dorothy Jacobson used the term "consumer interest" in her book Our Interests as Consumers.¹ The first doctoral dissertation that used the term was written in 1943 at the University of Chicago.² Another book entitled in part The Consumer Interest appeared in 1949.³

The consumer movement of the mid-1960's made the term more popular and, in 1964, President Johnson established a coordinating group known as the President's Committee on Consumer Interests. In the same period a national organization known as the American Council of Consumer Interests was formed. Several articles and books were written using the term "consumer

going to
be a
review of
(Canadian)
consumer
movement
rather
than U.S.

interest" and conferences on the subject were held.⁴

The term now is used frequently by government officials, 159
law-makers, consumer advocates, business representatives, and
politicians. The chairman of the Federal Power Commission, 160
while speaking in a U. S. Senate Hearing, said: "Among 161
Congress' chief concerns was the provision of meaningful 162
protection of the interests of the ultimate consumer. The 163
predominant concern of the Federal Power Commission, therefore, 164
is the protection of the consumer interest...."5 Senator 165
Ribicoff in his opening statement remarked, "The interests of 166
consumers are not adequately represented in these proceedings."6 167
Ralph Nader while testifying before the Senate observed, "The 168
jurisdiction (of the Agency for Consumer Advocacy) deals with 169
consumer interests arising out of marketplace transactions."7 170
John A. Stuart, representing the National Association of 171
Manufacturers said, "(The proposed agency is) a special interest
agency employing federal funds, to advocate laws and regulation 172
in behalf of a consumer interest..."8 173

THE MEANING OF CONSUMER INTEREST 175

Problems in Defining Consumer Interest 176

The increasing use of the term "consumer interest" has not 177
meant that its meaning and implications are clear in the minds
of all its users. Persia Campbell, realizing the problem, 178
remarks, "...we have to recognize that great difficulty presents 179
itself in any attempt made to apply such general criteria to the 180

particular issues that are continuously emerging from a complex economic system, particularly one so dynamic as our own. For instance, where does the consumer interest lie with respect to proposals for the repeal of the Taft-Hartley Labor Act, or for the St. Lawrence Seaway, or for guaranteed minimum profits on large-scale rental housing, all of which might have a noticeable effect on the average level of consumption, or that of particular groups."⁹

1. Diffusion

An important difficulty in defining consumer interest is its diffusion. "The consumer interest is the objective interest of the entire public."¹⁰ A member of the public is a consumer at the dinner table but he is a producer, a farmer, a worker or a business person during the other hours of the day before dinner."¹¹

An interesting elaboration of the diffusion was given by Loyns and Pursage, "Everyone must consume in order to survive...since all people are consumers, consumer interest must be reflected in all public decision-making. However, contemporary consumption decisions are made in an environment characterized by divergent pressures. Consumers face an almost endless array of goods and services...most individuals must be gainfully employed and work in order to accumulate sufficient resources to finance their consumption, implying that most people are also producers. As a result there is no single, well-defined pattern of actions which uniquely and universally determines consumption behaviour. Therefore while everyone is a

consumer, it is also true that no one is solely a consumer."¹²

2. Intensity

A second important difficulty in defining consumer interest is the variable intensity of the interest. All people are consumers, but their self awareness as consumers is generally lower than their awareness of their other roles. Consequently, their interests as consumers are at a lower intensity than their other interests. This makes consumer interests an issue that most people do not care very much about.¹³

3. Lack of Organization

Another problem in defining consumer interest is that people as consumers are not as well nor as effectively organized as are specialized groups (for example, business or labour) about theirs. The common interests that result in forming groups and organizations are less compelling than for the more specialized interest groups.

Conflict of Interest

Conflict refers to a situation in which a person is motivated to engage in two or more mutually exclusive activities.¹⁴ A conflict emerges whenever two or more persons (or groups) seek to possess the same objects, occupy the same space or the same exclusive position, play incompatible roles, maintain incompatible goals, or undertake mutually incompatible means for achieving their purposes.¹⁵

Man is both producer and consumer, his interest as producer is immediate and obvious, but as mentioned earlier, his interest as consumer almost always is more distant and diffuse. As a result, the two often come into conflict.¹⁶ The point is well illustrated by Senator Bob Dole in his testimony before the U. S. Senate. "In my home state of Kansas, we are especially sensitive to the dilemma of conflict in consumer interests. In the area of farm commodities, many consumer advocates have worked for lower farm prices with the goal of maintaining lower food prices for consumers.... (on the other hand) when the market signals a surplus through low prices, farmers are forced to cut back production, which increases the prices."¹⁷

Everyone in his role as a consumer wants more variety, lower prices, and better quality. At the same time everyone is a producer of goods or services and in his role as a producer wants a larger share of the national income through higher prices for his product. The benefits of lower prices for a product or service are diffused over the whole buying population. The benefits of higher prices, wages or rates of return accrue in large measure to the producer, wage earner or owner of capital.

There is no simple solution to the conflict between producers and consumers. The matter of who should get preference, the consumer or the producer, is highly controversial. Hilton Moore thinks that "The interests of the citizens as consumers should be put ahead of the citizen as producer because, if this were done, there should be a net improvement to many even if those who gained had to compensate

those who lost. We must give priority to the consumer's interests because that priority is a necessary condition for efficiency and an increasing real income per capita."¹⁸ This may not seem very convincing to the extent that if the producers get less, their real income may go down and they may have less for consumption and investment which may affect the real income of consumers.

Adam Smith favours the consumers because "consumption is the sole end purpose of all production, and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer. The maxim is so perfectly self-evident, that it would be absurd to attempt to prove it. But in the mercantile system, the interest of the consumer is almost constantly sacrificed to that of the producer, and it seems to consider production, and not consumption, as the ultimate end object of all industry and commerce...."¹⁹

He blamed producers for neglecting the interests of the consumers. "It cannot be very difficult to determine who have been the contrivers of this whole system; not the consumer, we may believe whose interest has been entirely neglected, but the producers, whose interest has been so carefully attended to; and among this latter class our merchants and manufacturers have been by far the principal architects."²⁰

In thinking about conflict of interest, two extreme solutions can be visualized: the first has total conflict of interest and the second has no conflict of interest. The kind of situation that has total conflict of interest is an

interaction in which whatever one participant wins the other must lose. Interactions of this type are called two-person zero-sum games. They have no room for cooperation and have complete conflict of interest. In the opposite kind of situation, which can be called a partnership game, both participants can attain their most preferred outcome at the same time. Partnership games have no conflict of interest because there is no reason for the participants not to cooperate fully with each other.²¹ The nature of conflict in the area of consumer interest will be discussed later.

Public Interest vs. Consumer Interest

The public interest is not the consumer interest even though the two often are equated and confused, either explicitly or implicitly. That this confusion exists is not surprising. Public interest, a concept as old as civilized society, is most often defined in the breach by regulatory bodies and governments who are aware that they are supposed to husband "it". To take us one step forward it is interesting to see what the definition of the public interest is and then see if we can shed some light on what the consumer interest is. Since the book is a journey to clarify the meaning of the consumer interest the balance of this preliminary chapter is only going to talk about the inability of others to define it in the past even though we will see that Ben Lewis came close in 1938.

The Public Interest

all this public interest is, or has been put in the law
 chapter and cut of chapter 1.

A colleague, Professor W. T. Stanbury, has extracted twenty-three definitions of the public interest from a variety of sources. One doubts the definitions are exhaustive but they exemplify several aspects of this elusive abstraction. The multi-faceted character of these definitions captures the many ways in which the concept has been perceived. Lest one think the concept relatively new, in 400 B.C., Plato, in The Republic and in some of his other works, implicitly, and most tantalizingly close to explicitly, uses the public interest concept as the function of what should be the objective of administrators of the state.

The simplest concept of the public interest is that it represents the aggregate of the interests of individuals in society. This view is expressed in the following definitions:

1. "The interest of the community then is, what? - The sum of the interests of the several members who compose it." (Bentham) 22

2. The public interest is "The policies government would pursue if it gave equal weight to the welfare of every member of society." (Woll) 23

3. "What the public requires as its own good, what is specifically the good of all without distinction, is a sum total of general conditions under the protection of which the legitimate

activities of everyone within the public may be exercised and developed comfortably." (Jean Dabin) 24

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4. "Something is a public interest if, and only if, it is an interest of anyone who is a member of the public; that is, if and only if it is essential for the protection, and even for the improvement, of anyone's welfare or well-being, where the means for protecting or improving this interest are out of the hands of most of the members of the public and is likely to be achieved only if the public takes a hand" (T.M. Benditt) 25

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A theme in many definitions is the public interest as a balance of sector interests. This view can be seen in the following definitions:

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5. "A decision ... is said to be in the public interest if it serves the ends of the whole public rather than those of some sector of the public." (Banfield) 26

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6. "There is no public interest, the concept is devoid of meaning. There are only the interests of groups." (Bentley or Truman) 27

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7. The public interest is "determined and established" through the free competition of interest groups. "The necessary composing and compromising of their differences is the practical test of what constitutes the public interest." (Binkley and Hoos) 28 341 342 343
8. The public interest "must necessarily represent a working compromise and be subject to continuous definition, as the need arises, in the process of achieving an often delicate balance among conflicting interest" (Boudreau) 29 344 345 346
9. The public interest is "a complex, requiring a social balancing of different interests and views through the distillation of a wisdom that is distinctly social in origin and different from any wisdom any individual can himself produce apart from organized society, and yet a wisdom that is enunciated or acted upon by individuals under the stimulation and restraint of society" (Appleby) 30 348 349 350 351 352 353
10. (Special Interests)n = The Public Interest (Appleby) 354

Many writers avoid a direct definition of the public interest. Instead the public interest is 355

viewed as a dynamic process for moderating the
 conflicting interests that inevitably exist within any
 society. This view is persuasive and takes a variety
 of forms as can be seen in the following definitions:

11. "I suggest that the public interest may be
 presumed to be what men would choose if they saw
 clearly, thought rationally, acted
 disinterestedly and benevolently." (Lippmann) 31

12. "The public interest may be defined as the
 best response to a situation in terms of all the
 interests and of the concepts of value which are
 generally accepted in our society." (Redford) 32

13. The public interest is "those government
 actions that most ... (benefit) the whole
 society." It is "closely related to the minimal
 consensus necessary for the operation of a
 democratic society" (Downs) 23

14. "The common good (or public interest ...) 370
 is best concerned as the preservation and
 improvement of the community itself" i.e. "the 371
 human needs of men in society, needs which are 372
 more basic and essential than their temporary 373
 wants or desires" (Cochran) 34

15. The term "public interest" "is used to express approval or commendation of policies adopted or proposed by government." The 376
descriptive meaning of the term "is properly 377
found through reasoned discourse which attempts to relate the anticipated effects of a policy to 378
community values and to test that relation by 379
formal principles" (i.e. universalizability) It
"does not provide a divining rod or philosopher's 380
stone for determining proper public policy." 381
(Flathman) 35

16. The public interest is the standard that guides the 382
administrator in executing the law. This is the verbal symbol 383
designed to introduce unity, order, and objectivity into
(public) administration. This concept is to the bureaucracy 384
what the 'due process' clause is to the judiciary." (Herring) 36 385

17. "An administrator best serves the public interest 386
when his action creates or restores an equilibrium 387
among all the affected group interests, or if this is 388
not possible, when the disequilibrium following his 389
act is minimized." (Schubert's summary of Leiserson's 390
definition) 37 391

18. "The primary determination of the public interest for public 392
servants is by the action of his political and hierarchic 393

superiors, acting through the conventional channels, by legislation, and court decisions where applicable." In areas where the public servant has discretion he must consider the consequences to those immediately affected by the proposed action, but he must remember there are others unorganized and unrepresented and "as far as he can perceive the consequences to them, he must be their representative." (Monypenny, proposed code of administrative ethics) 38

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19. "The public interest is ultimately identified with the achievement of a society based upon or pervaded by intelligent goodwill" (Griffith) 39

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20. "The public interest in a problem is limited to this: that there shall be rules, which means that the rules which prevail shall be enforced, and the unreasonable rules shall be changed according to a settled rule" (Lippman, The Phantom Public, 1930, p. 104) 40

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"The public is interested in law, not in the laws; in the method of the law, not in the substance; in the sanctity of contract; not in a particular contract; in understanding based on custom, not in this custom or that. It is concerned in these things to the end that men in their active affairs shall find a modus vivendi; its interest is in the workable rule which

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will define and predict the behaviour of men so that they can make their adjustments" (Lippman, The Phantom Public, p 105) 41

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21. "The public interest is a standard of goodness by which political acts can be judged; action in the public interest, therefore, deserves approval because it is good....To say an action is in the public interest is to judge it consistent with a political situation that is beneficial to everyone, if not immediately at least in the long run, and whether or not everyone realizes it....The public interest is the highest ethical standard applicable to political affairs." (Cassinelli) 42

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22. "Decisions that are the product of a process of full consideration are most likely to be decisions in the public interest... people accept democratic decision-making processes because these provide the maximum opportunity for diverse interests to seek to influence governmental decisions at all levels." (Schubert) 43

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23. "All measures which promote, serve, and benefit the human desire for affirmative and constructive participation in the enterprise of civilization must be deemed to be in the public interest because they increase the good of all as intelligently conceived" (Bodenheimer) 44

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The "public" refers to all participating members of a specific society at a point in time. Therefore, clearly, the public interest is culturally dependent since its definition changes as the values in a society change. The world could not have the governmental diversity which exists if the public interest were precise, acultural, written on the Rosetta Stone of civilization for all to know and understand and apply with a judicious hand. What was in the public interest in Canada in 1865 clearly is different from what that concept now means.

A precise, once and for all definition of the public interest, and we will see later the consumer interest, is not possible since the interest is defined by a process. The definitions provided above are not really definitions of what is, or what is not, the public interest. They are, rather, the definition of the process of weighing of the interests of various groups in the society, or culture, or state, to produce a decision which is at least minimally acceptable to those who have power to confirm or deny the implementation of the decision.

The fact that the concept is elastic and relative, rather than fixed and absolute, makes it of greater utility in the quest for a supporting consensus as social changes occur and efforts at accommodation are made. The public interest concept functions to remind the parties immediately concerned that there are considerations extending beyond their own goals or their particular rivalries or negotiations. As an aim to be articulated or an ideal to be enunciated, the public interest stands for the broad versus the narrow, the more inclusive

versus the limited. The existence of a common interest is an implicit assumption, although its more specific manifestation cannot always be readily agreed upon.

The public interest can be visualized as a continuum that represents the value, aspirations, and objectives of the community or policy. There are values that are clearly central, such as public safety and there are objectives that are controversial, such as fluoridation of water or discouragement of cigarette smoking. It is impossible to state with precision where any given item belongs on the continuum, yet there is general acceptance that a range of activities and goals exist above selfish individual interests.

An inquiry into the process of defining and applying the concept of public interest and contrasting this interest with the consumer interest is a major function of the remainder of this book. Before proceeding, let us see how the consumer interest has been perceived.

The Meaning of Consumer Interest

The Webster's New International Dictionary defines interest as "a right, title, share or participation in a thing or concern on the state of being concerned." The definition of interest in the Encyclopedia of Social Science II is much more elaborate. When a number of men unite for the defense, maintenance, or enhancement of any more or less enduring position or advantage which they possess alike or in common, the term interest is applied both to the group so united and to the cause which unites them.⁴⁵ This definition assumes an active role on the part of the participants. In the case of consumer

interest, this may not be as evident because of the diffuse, ubiquitous nature of this interest.

The Organization for Economic Cooperation and Development (OECD) has classified all consumer interests into physical interests and economic interests.⁴⁶ The physical interests include health hazards and safety. Protection against fraud and deception by unscrupulous traders are included under economic interests. The classification is simple, but it is too simplistic and would not be acceptable to most consumer groups in Europe or North America.

Nadel treats consumer interest as public interest or at least part of it. "...the consumer interest is a collective or a public interest. Since every person is a consumer, policy which benefits the consumption pattern of citizens and protects them from untoward effects of their consumption is a policy which benefits all citizens. Given this benefit, it is a policy in which all citizens - the public - have an interest. It is therefore a public interest or part of the larger public interest."⁴⁷

In view of the flexibility inherent in the concept of public interest the representatives of manufacturers advocate the use of public interest over consumer interest and equate one with the other. "Behind all of these objections is our unshaken belief in the public interest as the basis for law and public policy. If you wish to grasp clearly the fallacy of this special purpose agency (Consumer Advocacy Agency), we invite you simply to trace through the bill before you, and in each place where the word "consumer interest" or "the consumer" appears,

substitute the word "public interest" or "the public". If you do this, you will find that you have simply defined the purpose of government itself, as the protector of consumers and all other citizens in all their interests. The concept of public interest is a precious one which we hope you will not lightly change for a new catch phrase (consumer interest), however popular at that moment.⁴⁸ While the National Association of Manufacturers believed the public interest is equated with the consumer interest we do not.

In our research it is surprising how often the consumer interest is talked about but how infrequently it has been defined.

The only overt attempt at definition of the consumer interest that we were able to find was by Ben Lewis in 1938. This seminal article is most interesting as it follows activities of various agencies charged with representing the consumer interest under the New Deal in the United States during Franklin Roosevelt's administration. Lewis perceived the regulatory function of government in regulating the public interest to be the reconciliation of three major interest groups, labour, capital and consumer. The consumer interest representation and the goals of the Consumer's Advisory Board, one of the many regulatory agencies in this period, was "directed to the establishment and maintenance of a desirable economic system as a whole - a system responsive to the economic demands of the total community. It urged the preservation - indeed, the creation - of elasticity and flexibility in the country's productive and distributive mechanism; and it fought

against the establishment of artificial rigidities calculated to protect existing properties and equities at the expense of the rest of the community."⁴⁹

While this definition is somewhat narrower than the definition we have provided in the final chapter of this book because of its completely economic tone, a perusal of his article shows that the basic concepts were at least seminal in his thinking at that time. In spite of Lewis' definition we feel that those persons who have thought about or participated in the process of having the consumer interest represented would not accept his definition as a final one. In our search of the literature we found a lack of a theoretical basis on which to base policy development for consumer interest representation and this book is the result of that felt need.

Structure of the Book

Over two hundred publications, which were reviewed in the search to clarify the meaning of the consumer interest, are classified into six categories which, with the final summary and conclusions chapter form the structure of this book. The six categories are the Economic, Marketing Concept, Consumerism, Information, the Law, and the Social Approach to Consumer Interest.

It is interesting to note the range of writing where we found the concept of consumer interest used and yet we encountered only one relatively narrow specification of that interest.

Summary and Conclusions

Increased activity in the field of consumerism has highlighted the need to specify the dimensions of the consumer interest to provide an operational aid to representing and protecting it. The consumer interest is characterized by its diffusion over all activities which affect consumers, its relatively low intensity and the conflict between the diffused nature of the consumer interest and the intensity of the special interests in one's job, one's political interests or one's social affiliations. A further confusion of the broad public interest and a more specific consumer interest complicates the problem of identifying and protecting the consumer interest.

The six chapters which analyze the two hundred publications surveyed for this report and a summary and conclusions chapter have as their purpose the operational definition of the consumer interest to aid in pointing the way for future investigators in this area and to the development of consumer policy in private and public organizations.

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Chapter II

THE ECONOMIC APPROACH AND THE CONSUMER INTEREST

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Economics was the first of the social sciences to analyze the propensity of people to consume and the behaviour of firms responding to that demand. Economics, therefore, is the logical place to start an investigation of the consumer interest. Economic theory does not provide a useful definition or specification of the consumer interest although it is implicit in indifference curve analysis and the individual utility function. Welfare economics subsumes the consumer interest in aggregative concepts such as the demand curve and the consumption function.

The possibility of a more thoroughgoing study of the economic role of interest groups as such is suggested by the work of economists like Sombart and Veblen.¹ Veblen was not particularly interested in consumer interests, but he did analyze the motives of businessmen and the interests of common men as consumers.

Assumptions of Economic Theory

Broadly speaking, economics is concerned with the production and distribution of scarce resources for the satisfaction of unlimited consumer wants (consumption).² In a free enterprise system, the commonly accepted assumptions are: the consumer guides production; consumption is the end and

*In process of adding
newest consumer economics
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purpose of production; competition is an adequate safeguard of the consumer; retailers and other businessmen protect consumers out of their own self interests; consumers are rational and awake and alive to their own interests.3 679 680

These assumptions were considered as built-in safeguards of consumer interest, whatsoever they were. They implied that the economic system will satisfy the needs of consumers in a manner which will be "fair" to both the producer and the consumers. 681 682 683

Failure of the Economic Model 685

The economic system, in practice, unfortunately did not work as anticipated by Adam Smith and others. The "Invisible Hand" of "Self-interest" did not serve the needs of consumers in a manner fair to the consumer. The results it produced showed that the system was more favourable to producers than to consumers. 686 687 688 689 690

According to Paul Samuelson, "While Smith did recognize some of the realistic limitations on this doctrine, it was not until later that economists discovered this truth. The virtues claimed for free enterprise are fully realized only when the complete checks and balances of perfect competition are present....Historians quarrel over whether there ever was a golden age of free competition. And certainly, competition is not now perfect in the economist's sense. We do not even know whether, because of the fundamental nature of large scale production and technology, consumers' tastes, and business organization, competition is becoming less or more intense."4 691 692 693 694 695 696 697 698 699

The same authors point out other weaknesses of the system by saying "Firms do not know when consumer tastes will change, 701

therefore they may overproduce in one field and underproduce in another. By the time they are ready to learn from experience, the situation may have changed again. Also, in a competitive system many producers simply do not know the methods of other producers, and costs do not fall to a minimum. In the competitive struggle one can sometimes succeed as much by keeping knowledge scarce as by keeping production high.⁵ They go on to discuss the limitations of the system by introducing monopoly.

The dissatisfaction with the free enterprise system has been manifested from time to time in a number of books which quickly became best sellers. In 1905, Sinclair's Sinclair's book The Jungle gave a graphic description of unsatisfactory conditions in meat processing plants in Chicago. These were shocking and nauseated many Americans:

The rats were nuisances, and the packers would put poisoned bread out for them and they would die, and then rats, bread and meat would go into the hoppers together....Men who worked in the tank rooms full of steam....fell into the vats, and when they were fished out, there was never enough of them to be worth exhibiting - sometimes they would be overlooked for days, till all but the bones of them had gone out to the world as

Durham's Pure Leaf Lard.⁶ By 1946, Sinclair's book had been translated into twenty-seven languages.

Chase and Schlink's book, Your Money's Worth, published in

1928, gave information on the testing of goods for the armed services and government departments by the National Bureau of Standards, and detailed the savings in government expenditure that resulted from the tests. Many of these were consumer goods. The authors argued that consumers should have the benefit of tests similar to those carried out by the Bureau of Standards. The book resulted in the formation of Consumers' Research, Inc. in the United States.⁷

Schlink teamed up with Arthur Kallet to write a second bok, 100,000,000 Guinea Pigs which highlighted the dangers in everyday foods, drugs, and cosmetics faced by 100 million Americans in 1933. The book became so popular that by 1939, the book had its thirty-fourth printing. "That big, juicy apple you have at lunch --- is coated with arsenic, one of the deadliest of poisons --- A tube of Pebecco Toothpaste --- contains enough poison to kill three persons ---the food and drug industries have been systematically bombarding us with falsehoods about the purity, healthfulness, and safety of their products, while they have been making profits by experimenting on us with poisons, irritants, harmful chemical preservatives and dangerous drugs.⁸

The Causes of the Failure of the Market System to Protect the Consumer Interest

A number of factors were considered responsible for the failure of the free enterprise system to safeguard the interests of consumers. Robert S. Lynd charged the system with creating administered markets and commercially controlled standards of living. "Paradoxically, the consumer has never been so free to

choose as he is today and at the same time so little free, so completely bound as he is upon the wheel of an administered market and a commercially controlled standard of living. The consumer is free to take or leave under a system in which free competition is becoming increasingly unreal."⁹

Kenneth Dameron blames lack of knowledge on the part of consumers and the separation of manufacturers and consumers, "----the consumer's choice is greatly handicapped by the fact that he knows so little about the products he uses that he is unable to make an intelligent choice. Furthermore, the economic processes have limited the consumer's relation with production until now he meets it only at the point of final or ultimate sale".¹⁰

Numerous other factors were responsible for the failure of the economic system to serve consumer interests. "The developments have profoundly affected the climate of the market, causing economic theory to lag behind the facts it explains. It is often said - although usually, it must be admitted, by those with a commercial interest in a quiet life - that consumers need no special protection, all can be safely left to the market. But the perfect market is an economist's dream and consumer sovereignty a myth. In real life products are complex and of great variety, and consumers (and retailers) have imperfect knowledge. Suppliers may often have a dominant buying position. As a consequence, bargaining power in the market is weighted against the consumers."¹¹

The competitive model which is the foundation of welfare economics depends upon a number of structural assumptions.

1. The consumer has access to a large number of substitutes. In perfect competition there would be a large number of perfect substitutes - a set of standardized products. 774

2. The supply of products on the market is provided by a large number of competing firms. 776

3. Both consumers and suppliers have access to all the information needed to make rationally optimal decisions. 778
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4. There is complete mobility of firms. 780
Entry and exit is uninhibited. All firms, both actual and potential, have access to the resourced required - land, labour, and capital - for production. 781
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Clearly these assumptions are not satisfied in the real world. It is assumed, however, by proponents of the competitive model that the benefits of the model can be achieved as long as the assumptions are substantially satisfied. That is, workable competition should be our objective. If the structure of the system can approximate the ideal model prices will be determined by competitive forces, social welfare defined in material terms as a high standard of living will be possible, efficient firms will be rewarded with profits, and the resources of society will be used to produce the products and services wanted by society - consumers. 783
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Unfortunately there are a number of weaknesses in the workable competition argument.

1. If the assumptions of the ideal model 794
are not satisfied there is no theoretical basis
for deducing that the objectives of the ideal 795
system will be achieved in the real world by a 796
partial realization of the assumptions.

2. The competitive system appears to 798
generate a small number of differentiated
products rather than a large number of 799
standardized products.

3. Technological developments favor the 800
large firm. Concentration, merger, integration,
and conglomerates seem to be more the natural 801
order of things than the small, independent,
single product firm of the ideal model. 802

4. Information is not freely available nor 804
is it easily accessible. Consumers are at a
severe disadvantage in their ability to make wise 805
choices. As product sophistication and 806
complexity increases the choice process becomes
increasingly difficult. 807

5. The barriers to entry and exist are 808

significant. Access to resources is limited in a variety of ways.

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In the over-simplified world of the economic model rational consumers allocate their buying power according to their perceived satisfactions. They maximize their personal utility by moving it to the highest achievable set of indifference curves. The result is optimal because rational suppliers react to the demand curves that represent the aggregate of consumer desires and the forces of competition ensure that the results are achieved with the most efficient use of society's resources. The consumer interest is satisfied in a perfectly rational and systematic way.

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The structure of the real world differs markedly from the ideal model. Much of the legislation in the area of monopolies and mergers attempt to move economic entities in society towards the structure of the ideal model. However, other legislation such as laws respecting union,s professions, agricultural marketing boards, and the like run counter to the philosophy of free entry, maximum resource flexibility, and open competition.

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Economic Efficiency

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The consumer interest cannot be equated to lowest possible prices, the highest possible standard of living, or economic efficiency. However, such economic objectives must be central to any appraisal of the consumer interest. The consumer must be better off if society's resources are put to their highest and best use. The economic theory of exchange can demonstrate that under conditions of pure competition prices will be optimal in the sense that the market will be cleared. If there are

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imperfections in the market, such as monopoly power, then consumers must be adversely affected. Prices may be stable without an optimal use of resources. Prices may remain high in a period of over-supply so that the market will not be cleared.

An important social question is how much is aggregate economic welfare or reduced by the misallocation of resources that results from market imperfections. The welfare loss, measured in terms of percentage reduction in the national product, is minimal, probably less than one percent.¹² The loss of national income, however, is not the only cost. "Managerial slack" is the potential for protected managerial inefficiency that may exist because of market imperfections. The economic concept of "managerial slack" identifies a significant social cost. It is likely that this source of inefficiency may be many times as important as allocative efficiency. It is clearly in the consumer interest to ensure that industry operate at the minimum level of costs, that is, at maximum efficiency.

An important further consequence of managerial slack is that there will be a redistribution of income away from the consumer to the producer. Such a redistribution is not, in itself, a loss to society but a transfer of buying power. The income transfer effects of inefficiencies due to managerial slack are not necessarily socially undesirable. The question of "who should get what" and the question of the redistribution of consumer surplus are ethical questions. They are political issues. They are an important aspect of the consumer interest discussed at length in Chapter VII.

Dynamic efficiency in industry is a complex and important

phenomenon. If signals from the marketplace to change the amount produced are not clear, products, manufacturing and distribution methods, and business practices that may have been appropriate at one point in time are no longer optimal. Unfortunately, when monopoly power exists it provides a protective umbrella which permits inefficiencies to be ignored or to become entrenched as traditional practices. The natural signalling of the marketplace is blunted. This secondary cost of dynamic inefficiency is impossible to measure but runs counter to the consumer interest. Innovation in new products and new methods and in the improvement of existing products will occur only if there is an incentive to experiment and to change. The possession of substantial market power will at worst stifle innovation and at least will not provide an economic incentive for the development of imaginative new ideas.

Economics Contribution to Defining the Consumer Interest

Economists have provided some tools for analyzing the consumer interest even though the foregoing description of occurrences in the market economy are rather conclusive indications that the interests of consumers are not protected by market forces. In addition, that interest has been assumed and not specified.

The contributions of the economic literature has been mainly in the area of indifference curve analysis and the extensions of this analysis by modern theoreticians such as Arrow¹³ and Little¹⁴ when describing social welfare functions.

Neither of these writers has directly addressed the problem of individual rights and their ability to be represented in social choice decisions. These concerns of the political and legal theorist are discussed in Chapters 6 and 7.

The work of the economists in this area is tantalizingly close to attacking directly the problems and prospects of the consumer interest. Extensions of the work in this area of social welfare economics appears to be a potentially fruitful avenue for future work in defining and explaining that interest and its relationship(s) to other interests in society.

Summary and Conclusions

The consumer interest has either been subsumed under the aggregate demand curve or honored in the breach in examinations of the economic literature on the consumer interest. There is surprisingly little direct reference to the consumer interest in the economic literature. The closest research to the problem is in the social welfare literature on social choice decisions. It is in this area where future research appears most fruitful.

FOOTNOTES

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CHAPTER III A

THE MARKETING CONCEPT APPROACH TO CONSUMER INTEREST 930

The widely heralded "marketing concept" is a logical extension of the concept that forces in the market place will control its operation. The inability of the free enterprise system to protect the interests of consumers, shown in the previous chapter, leads one naturally to look at the treatment of consumer interests in the discussion of the "marketing concept" and the blind acceptance of "consumer sovereignty" as a business philosophy. 931 932 933 934 935 936

The marketing concept deals with a normative approach to the behaviour of the firm which uses as one of its basic consequences the assumption that the consumer interest is served when the firm's interest is served. This logical fallacy, oft repeated and assumed as gospel by marketers, has widespread acceptance. It has been used as a major argument by business firms for not discussing the phenomenon of consumerism and for equating the consumer interest with the interest of business firms. 938 939 940 941 942 943 944

The Meaning of the Marketing Concept 945

The emergence of the marketing concept was an evolutionary development. The concept might reasonably be dated from the publication of R.C. Davis' The Fundamentals of Top Management in 1951 1 but the philosophy embodied in the concept can be traced to a much earlier date. W.H. Hutt, in his book 946 947 948 949

Going to be condensed
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chapter (III B)

Economists and the Politics published in 1937, coined the term "consumer sovereignty."

The essence of the marketing concept is a "customer orientation backed by integrated marketing aimed at generalizing customer satisfaction as the key to attaining long-run profit volume."² Similar views are, "The marketing concept point-of-view is all the activities of the company should be directed to satisfy customers at a profit."³ Lazer introduces the idea of customer satisfaction through efficiency. "...marketing management fulfills the greater part of its responsibility by providing products and services to satisfy consumer needs profitably and efficiently. Those adopting the view believe that as a natural consequence of its efficiency, customers are satisfied, firms prosper, and the well-being of society follows automatically."⁴ Conceptually this is not unlike Adam Smith's "guiding hand."

According to this philosophy, the consumer is sovereign in the market place. Not only the marketing programme of a business firm, but all business operations are determined by his needs and desires. "....The marketing concept is defined as a managerial philosophy concerned with mobilization, utilization and control of total corporate effort for the purpose of helping customers solve selected problems...."⁵

The idea of consumer sovereignty is very close to democracy and freedom. "This view (consumer sovereignty) I find very close to the idea of democracy or freedom - the idea of normally letting each member of society decide what is good for himself, rather than have someone else play a paternal role. It is also

very closely related to the idea of efficiency - efficiency in the use of resources for the greatest possible satisfaction of the needs and desires of people. It is understandably why the full achievement of consumer sovereignty has been called ideal output."⁶

The marketing concept became so popular, at least in theory if not in practice, that a past president of the American Marketing Association had to say that "admitting that one's company does not have the marketing concept has become, in some quarters, like admitting that one doesn't have a modern computer.....it's almost un-American."⁷

The reason for this popularity was pragmatic rather than ethical. "The key idea of the marketing concept is that the firm should organize itself so as to meet consumers' needs as well as possible. In so far as a firm succeeds in doing this, it is assumed that its operations will be financially successful. Implicit in the marketing concept is the belief that the consumer should be well served. This belief seems to be justified on pragmatic grounds rather than ethical ones - serving the consumer is good business, not necessarily his inherent right."⁸

Consumer Satisfaction As Consumer Interest

Although the marketing concept did not provide any elaboration of the consumer interest, it can be said that according to this concept the satisfaction of the needs of consumers was equivalent to serving the interests of consumers.

The task of identifying consumer interests (needs) was entrusted to the business firms. "...the principal task of the marketing function...is not so much to be skillful in making the customer do what suits the interests of the business as to be skillful in conceiving and then making the business do what suits the interests of the customer."⁹

Kotler considers "the marketing concept a great step forward in meshing the actions of business with the interests of consumers. It meant that consumer wants and needs became the starting point for product and market planning. It meant that business profits were tied to how well the company succeeded in pleasing and satisfying the customer."¹⁰

The following major assumptions can easily be identified under the marketing concept:

1. The consumers are well aware of their needs, wants, desires, likes, and dislikes, etc. 1008
2. Consumers dominate the business firms as the voter in a free society and retain ultimate control over the political process.¹¹ 1010
3. The consumers have enough ability to make a free and intelligent choice out of the marketing programmes (products, prices, promotion, and channels of distribution) of business firms. 1012
4. The business firms are capable of identifying the needs of consumers. 1013
5. Production is based on anticipation of 1014

consumer needs.

6. The needs originate within the consumer.¹² 1018

7. Firms make a profit while satisfying consumer needs. 1019

It is not at all obvious that the assumptions underlying the marketing concept are met on anything like a regular basis. 1020
The assumptions described above are quite strong and as a consequence it is not obvious that the marketing concept provides sufficient protection for the consumer interest. 1021
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The Criteria of Success in Serving Consumer Interest 1025

Purchases, particularly repeat purchases, of a product or service are considered a real proof of serving the interests of consumers. ".....I interviewed hundreds of business executives and listened to countless assurances that we must be satisfying consumers: after all, we're still in business, aren't we? The dollar sign always seems to be that standard reference point for business decisions. If sales and profits are good, then businessmen figure that someone must be doing something right."¹³ 1026
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The President of the Grocery Manufacturers of America thinks that "Business becomes responsible for protecting its customers the minute it puts a consumer product in the market...The very existence of any business depends upon customers who are not only protected but pleased."¹⁴ The Chairman of Unilever uses profit as a criterion for successfully 1033
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serving consumer interests. "the blunt fact is that if we do not provide what the housewife wants, our failure will soon be reflected in our profit figures, and you, I am sure, will not be slow to visit your displeasure upon your Board, and quite rightly."¹⁵

Martin and Smith while discussing the argument of high rate of product failures as proof of the fact that consumer interests are being served say; "The high rate of product failure is cited as evidence that consumer sovereignty is by no means a dead letter. The American Ford Motor Company spent \$260 million on developing its Edsel car, every possible contingency was covered, but it was an abject failure. No amount of promotion or sales ingenuity could make the public buy it."¹⁶

The same authors also point out that there is a fallacy in this argument about product failures. It assumes that products fail because the public recognizes their intrinsic inferiority. This is not necessarily so because the effect of advertising and promotion can lead consumers to reject a product purely for capricious reasons and not necessarily because it is inferior in any functional sense...The truth is that modern marketing techniques have imposed their own criteria of success and failure. If the public fails to buy a product which is carefully designed for a specific market this can be due as much to defects in the marketing strategy as to defects in the product."¹⁷ Betty Furness, Special Assistant to late President Johnson rightly had the same feelings. "We all know, that deceptive products have been marketed well and good products have been marketed deceptively."¹⁸

There is another fallacy in the argument that if consumers are repeat purchasers of products the consumer interest is being served. If there are no alternatives to products in the marketplace consumers will continue to buy what is available. This situation can occur due to market concentration which excludes from the distribution system alternative products, a lack of creativity by firms in developing better alternatives or for any number of other reasons.

Without a complete economic collapse, the fact that consumers make repeat purchases of a product is not a provable or disprovable hypothesis in itself, especially without a definition of the meaning of the consumer interest. This is a main weakness in the marketing concept.

Weaknesses in the Marketing Concept

The marketing concept has some inherent weaknesses in serving the consumer interest. Its major weaknesses are that it does not begin with a clear cut definition of the consumer interest and that it is contradictory. "The main problem that is coming to light rests on the ambiguity of the term customer satisfaction. Most businessmen take this to mean that consumer desires should be the orienting focus of product and market planning. The company should produce what the customers want. But the problem is that in efficiently serving customers' desires, it is possible to hurt their long-run interest."

Kotler gives examples of products which may please the consumers, but may not be in their basic or long-term interests.

Large, expensive automobiles please their owners but increase the pollution in the air, the congestion of traffic, and the difficulty of parking, and therefore reduce the owners' long-run satisfaction. The food industry is oriented toward producing new products which have high taste appeals. Nutrition has tended to be a secondary consideration. Many young people are raised on a diet largely of potato chips, hot dogs, and sweets which satisfy their tastes but harm their long-run health.

"The packing industry has produced many new convenience features for the American consumer such as nonreusable containers, but the same consumers ultimately pay for this convenience in the form of solid waste pollution. Cigarettes and alcohol are classic products which obviously satisfy consumers but which ultimately hurt them if consumers in any excessive amount."

Kotler suggests broadening of the original marketing concept to include a societal marketing concept which calls for a customer orientation backed by integrated marketing aimed at customer satisfaction and long-run consumer welfare as the keys to attaining long-run profitable volume. However, who determines the long-run welfare is of critical importance and not answered yet in the literature of marketing.

Jerome Rothenberg questions the very idea of consumer sovereignty. "My conclusion is that consumers' sovereignty is incomplete and ambiguous. In order to make it operational, a series of highly controversial, partly normative decisions have to be made. Further, the extent to which consumers can be truly sovereign is questionable. In view of this, the concept loses

attractiveness."²¹

According to the same author, the principle of consumer sovereignty as presently employed is a value judgement which stipulates that we should take the degree of fulfillment of consumers' wants - or the degree to which performance accords with consumers' tastes - as a criterion for evaluating the social desirability of different social situations and, through these, the desirability of the various public policies or institutional structures which give rise to them. The form such criterion should take is not obvious. For one thing, the central fact of scarcity means that no combination of social structure and public policy can lead to a satiation of all wants.

The possible is limited by available resources and the state of technological knowledge. Our criterion therefore becomes: how good is performance relative to the best it might conceivably be? Optimality consists in maximizing consumers' utilities subject to the constraints of available resources and techniques.

The criterion must be able to compare situations in which the well-being of a large number of individuals is involved. What does it mean to satisfy the potentially differing tastes of a numerous group? Does the principle itself determine a unique function of these tastes which is to be maximized. The answer is not clear. Indeed, even its epistemological status is not clear.

The principle surely requires at least that the first partial derivative of social welfare with respect to the welfare

of any one individual be positive, that is, that any one person's improvement, everyone else's well-being unchanged, is a sufficient condition for a social welfare improvement. Consumers' sovereignty has been thought to imply the Pareto optimality criterion. The reason for this belief is that largely because in its early treatments it was deemed equivalent to allowing consumers to trade freely on purely competitive markets, pure competition being taken as the institutional structure which permits the freest expression of tastes.²³

The Manipulation of Wants

One of the implied assumptions of both the marketing concept and pure competition is that the consumer knows his needs and wants. Slitcher questioned this as early as 1931. "The consumer often does not know his or her own desires with sufficient definiteness to describe them to another person. Frequently he does not know what his wishes are until he has seen them for sale."²³ The credulity of the consumer makes it possible for him to be deceived as to quality, quantity, price, size, and many factors involved in buying.

Galbraith goes further and charges the businessmen with manipulation of consumer wants. He calls it "the management of scientific demands."²⁴ Galbraith views social outcomes as the result of the direct power of those who control large productive organizations, and partly as the result of consumer choices manipulated by those who control production. He replaces consumer sovereignty with producer sovereignty. In neoclassical

theory, consumer preferences are exogeneously given. In Galbraith's schema, preferences are determined by the psychic manipulation of consumers by corporate technostructures. In theory, consumer preferences are generated through the day-to-day experiences of individuals in their social activity.²⁵

Lazer calls marketers taste counsellors. "Since the American economy is a materialistic, acquisitive, thing-minded, abundant market economy, marketing becomes one of the cores of understanding and influencing life styles, and marketers assume the role of taste counsellors. Since American tastes are being emulated in other parts of the world such as Europe, Japan, and Latin America, the impact of our values and norms reverberate through a broad international community."²⁶

Toynbee classifies wants into needs, wants and "bogus wants" which make for unwanted demand in excess of genuine wants. Needs for necessities of life are primary, but genuine wants are also acceptable. These are the wants that we become aware of spontaneously, without having to be told by Madison Avenue that we want something that we would never have thought of wanting if we had been left in peace to find out our wants for ourselves. The third category, the unwanted goods, are of course easy to give up. We have merely to stop listening to Madison Avenue.²⁷

Katona, not agreeing with the charge of manipulating wants, says, "The consumer was never sovereign in the sense of being wholly autonomous, and he is not sovereign today. However, the assertion that his sovereignty has diminished during the last twenty or fifty years is most questionable. But even if it had,

the consumer is still neither a puppet nor a pawn. For a while
 some consumers may be stimulated into buying something that is 1180
 useless or wasteful, but they do eventually learn better. A 1181
 study of empirical evidence will show that most consumers, 1182
 though they are not ideal rational men, are circumspect and 1183
 sensible."28

The Need for a Social Concept

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The marketing concept is criticized for not serving the 1185
 interests of consumers. Rathmell suggests a consumer concept or
 a social concept. "Broaden the marketing concept to look at the 1186
 total needs, desires, sensitivities, and feeling of people who 1187
 buy your goods. The marketing concept may be outdated. 1188
 Possibly the consumer concept or social concept may be more 1189
 appropriate. Short-term sacrifices could result, but so can 1190
 long-term gains. Marketing people should be concerned with 1191
 increasing the productivity of consumption."29

Lazer goes further and recommends a reorientation of the 1193
 entire marketing concept. "....an emerging view (of the
 Marketing concept) is one that does not take issue with the ends 1194
 of customer satisfaction, the profit focus, the marketing 1195
 economy, and economic growth. Rather its premise seems to be 1196
 that the tasks of marketing and its concomitant responsibilities 1197
 are much wider than purely economic concerns. It views the 1198
 market process as one of the controlling elements of the world's 1199
 social and economic growth. Because marketing is a social 1200
 instrument through which a standard of living is transmitted to 1201

society, as a discipline it is a social one with commensurate social responsibilities that cannot merely be the exclusive concern of companies and consumers."³⁰

Lerner ridicules the idea of a social concept by saying, "Among the current deprecations of concern with consumer sovereignty is its rejection on the grounds that it concentrates on the individual instead of considering society as an organized whole with its higher purposes to which narrow interests of the individual should be subservient. Sometimes this is adduced in the name of all humanity, sometimes in the name of an even wider world spirit or collective mind. More often it is found in the narrower context of the interests of a race or class or nation."³¹

Drucker thinks that there was nothing wrong with the marketing concept. The major cause of dissatisfaction was that it was not practiced. "We have asked ourselves where in the marketing concept consumerism fits or belongs. I have come to the conclusion that, so far, the only way one can really define it within the total marketing concept is as the shame of the total marketing concept....Marketing has been defined as looking at the world from the seller's end - and that's one way of looking at it. And that is the way we have been practicing it. But there is another definition of marketing, which is to look at the business from the buyer's end. And that is consumerism and we haven't practiced it."³²

If consumerism is to look at the business from the buyer's end, one must investigate the treatment of consumer interest in that forceful movement since it is apparent that the idea that the individual interest should be subservient to society as an organized whole" again approached the idea of public interest. The marketing concept approach does not define the consumer interest because the concept is a surrogate decision rule which in effect provides the business firm with a way to analyze its marketing task to direct the application of the firm's resources to satisfy a consumer need at a profit. It is an empty concept from the consumer interest viewpoint.

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Chapter III B

CONSUMERISM AND CONSUMER INTEREST 1311

A host of articles and books, mainly from journalistic and 1312
 consumer advocacy and protection sources, have been written
 which have been grouped under the heading of "Consumerism and 1313
 Consumer Interest" in this Chapter. 1314

In addition to searching for the consumer interest this 1316
 chapter provides the opportunity to trace the development of the
 consumer movement. The concepts and the dimensions of the 1317
 meaning of the consumer interest evolved with the growth of the 1318
 movement. Not surprisingly, the consumerism movement grew as 1319
 journalistic investigators pointed out the failures of the 1320
 market system to serve the consumer. 1321

The Failure of Marketing Systems to Serve Consumer Interests 1323

The litany of most marketers, as mentioned earlier, is that 1324
 their strategies are consumer oriented, i.e., the firm is
 supposed to take its marching order from the market. Yet the 1325
 happenings in the marketplace would belie this conclusion. Many 1326
 consumers believe that firms are guided more by avaricious, 1327
 rapacious, and exploitative self-interest than by consumer 1328
 interest.¹ Hence has evolved the consumerism movement. 1329

Kallet and Schlink, the authors of 100,000,000 Guinea 1331
Pigs,² criticized the system as early as 1933. "Using the
 feeble and ineffective pure food and drug laws as a smoke- 1332

screen, the food and drug industries have been systematically bombarding us with falsehoods about purity, healthfulness, and safety of their products, while they have been making profits by experimenting on us with poisons, irritants, harmful chemical preservations, and dangerous drugs." Another author, Fuller, writing on the same subject in 1972 said, "Today, nearly forty years later, the situation is worse, not better. Every new advance seems to have brought with it a more than equal share of danger. New hazards are more subtle, more sophisticated, more deadly than those of the less regulated days of the early thirties...It is 1933 all over again - multiplied by logarithms."³

Ralph Nader referring to the 1970 Hearings of the National Commission on Product Safety wrote "The Commission estimates that manufacture of hazardous products costs our society over \$5.5 billion each year. Each year as a result of incidents connected with household products, 20 million Americans are injured seriously enough to require medical treatment or be disabled for a day or more. This includes 585,000 hospitalized, 110,000 permanently disabled, and 30,000 who are killed."⁴

Ellen Roseman has the same story to tell. "Every day, Canadians buy shirts that shrink, toys that injure and roofs that leak. We sign contracts we don't understand for magazine subscriptions, home repairs and correspondence courses we don't really want. We answer ads for "first quality" carpets that are actually substandard, "12,000 mile" used cars with odometers that the dealers have rolled back, washing machines "reduced from \$350" that never sold anywhere near that price at all...

Instead of the kings of the marketplace we're supposed to be, we usually feel much more like its pawns."⁵

The Causes of Consumer Dissatisfaction 1360

The factors that resulted in consumer dissatisfaction are numerous. The analysis may begin from what Veblen said in 1920 about the motives of businessmen: "The businessman's place in the economy of nature is to make money, not to produce goods. The production of goods is a mechanical process, incidental to the making of money; whereas the making of money is a pecuniary operation, carried on by bargain and sale, not by mechanical appliances and powers."⁶

Failure of competition, proliferation of products, and impersonal buying are mentioned as other causes of consumer dissatisfaction. "Since the productive process was so prolific, goods poured into the marketplace in a torrent in which the most competitive aspects of marketing were spawned. However, out of the by-ways of competition also crept fraud, deception, shoddy goods, shabby practices. Deceit, usury, and guile were not new in the world; they had simply been enhanced with factors of transportation, advertising, technological complexity, and financial hocus pocus. Where once the buyers and sellers could stand face to face on equal terms, now the transaction had become impersonal, complicated, and heavily weighted on the side of the professional sellers. ...the consumer still buys in isolation, does not speak with an organized voice, and writes off his losses, disappointments, or even physical damage as tuition in the hard school of experience."⁷

The same author gives numerous examples of product proliferation. "...there was a bonanza of all the things we had done without: tires, flatirons, refrigerators, etc. Moreover, there was a great burst of goods we'd never seen before: detergents, nylons, T.Vs, plastics and frozen foods."8

Koch also mentions loss of personal contact and proliferation of products as two important reasons for consumer dissatisfaction: "Today the responsibility of business for protecting the consumer is broadening, because the American marketplace is undergoing basic changes. Consumers and producers, and even consumers and retailers, are more and more remote from each other. In the past decade there has been an astonishing expansion in the array of products, price ranges and sizes from which consumers may choose. Today consumers must make buying decisions on new and often extremely complex products such as stereo components for record players and aerosol-can cheese spreads which need no refrigeration some of which were unknown as recently as a year ago."9

A report prepared for the Organization for Economic Cooperation and Development (OECD) mentions the growth of mass production, acceleration of technical progress, the increase in purchasing power, and the widening of markets as four important reasons creating difficulties for consumers in decision making.

The report says, "While these developments have brought benefits to the consumer, he has in the process been confronted by a vastly greater range of goods, more complex and designed to meet a great variety of specific uses, produced in anticipation of demand rather than in response to it, promoted by more

vigorous and sophisticated selling techniques, and bringing into
play a more elaborate range of services. In such conditions it
has become increasingly difficult for the consumer to identify
dangers which may arise from the goods on offer, to recognize
deceptive practices before they have induced him to buy, to
choose the goods most suited to his particular needs, and to
ensure that his wishes are adequately conveyed to and reflected
by the supplier."¹⁰

Broffman while speaking of the imbalance between producer
and consumer says: "The current consumer movement asserts that
there is a growing imbalance between producer and consumer, that
a few hundred companies dominate society, and they are
unresponsive to the needs of the consumer. Instead, they use
their power - aided by massive advertising - to manage the
market; that is, to persuade the consumer to buy whatever
products they choose to put on the market."¹¹ Although, being a
businessman he does not agree with this extreme view, he
considers it foolish to deny realities like lack of attention to
health and safety.

The giants of the industry are equally blamed for the
happenings in the marketplace. "The fly by night operator,
whose sole purpose is to cheat the consumer, operates outside
the law. Through painful experience the American consumer knows
his style and does his best to shun his persuasive approaches.
The American businessman is no less offended by the operations
of the shyster, and has created such organizations as the Better
Business Bureau to help keep them out of the marketplace. But
within the past decade, the disturbing realization has slowly

come to the American consumer that unethical, antisocial, and amoral business practices are not confined to the fringes of the marketplace: they also exist at the core of the American economic system, daily practiced by the same respected giants of industry who made this nation the most powerful and affluent on earth."¹²

Another important factor contributing to the dissatisfaction of the consumer is the expectation of perfection from technology. "...society has been thoroughly conditioned to expect perfection from its technology. Moon landing, miracle drugs, organ transplantations, and jet transportation make the house-wife wonder why zipper manufacturers cannot make one that will not jam."¹³

Robert C. Wells, calls it "a revolt of rising expectancy". "...the public is staging a revolt arising from frustration. Customers today expect products to perform satisfactorily, to provide dependable functional performance and to be safe. This threshold of acceptable performance is steadily rising."¹⁴ Broffman, President of John Morrell and Company while speaking before the American Meat Institute in 1971 said, "Things may also seem worse to some consumers today because they expect a great deal from American Technology. People exclaim: We did land on the moon. Why can't this meat be fresh?"¹⁵

Some businessmen think that consumerism is an invention of politicians. "A good many of my friends in business have been telling me over the years that consumerism is an invention of the politicians, and that there is no support for it in the marketplace. And I am willing to believe that up to a point."

But I've been around long enough to know that politicians don't flog dead horses - they can't afford to. They are in a much more competitive business than we are, and if there is no support for something they go elsewhere very fast."¹⁶

Markin thinks that the modern complexities reduce consumers ability to make intelligent decisions. "The consumers' dilemma is that he wants goods. He needs goods. But the fact is that technology is spawning such a torrent of new and improved goods, marketing is creating such complicated packages and deals, and advertising is so misleading, uninformative, and so riddled with half-truths, that it is difficult for the consumer to choose wisely and to be an effective decision maker."¹⁷

The History of Consumerism

going to expand with Canadian provincial

To locate the exact or even an approximate date of any movement is a very difficult task. So it is with the origins of the consumer movement. Martin and Smith think that any history of organized action by consumers in Britain would have been essentially a history of the consumer co-operative movement. According to them, when the first consumer co-operative was formed in the back streets of Rochdale in 1844, the weak bargaining position of poor unorganized consumers in relation to all powerful suppliers was to be seen in an acute form: payment in kind by employers, chronic indebtedness, adulteration of food, wide variations in quality and monopoly pricing.¹⁸

The beginning of the consumer movement in North America can be dated from the formation of Consumers' League in New York City in 1891. In 1898, local groups joined in a national

federation, the National Consumers' League and by 1903 the national organization had grown to 64 branches in 20 states.19 1482

Both Hermann and Kotler divide the consumer movement into three eras: the early 1900's, the mid 1930's and the mid 1960's. 1483

The First Consumerism Era "The Early 1900's" 1485

The first consumer era was fueled by such factors as rising prices, Upton Sinclair's "The Jungle", and drug scandals. The gain to consumers was the passage of the Pure Food and Drug Act of 1906, the Meat Inspection Act of 1906 and the creation of the Federal Trade Commission. 1486
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The Second Consumerism Era "The mid 1930's" 1490

The second era of consumerism in the 1930's was started by such factors as an upturn in consumer prices in the midst of the depression, the sulfanilamide scandal, the widely imitated Detroit housewives strike, the publication of Chase and Schliak's best selling book 100,000,000 Guinea Pigs which inspired even Franklin D. Roosevelt. These factors resulted in the strengthening of the Pure Food and Drug Act and the granting of more powers to the Federal Trade Commission to regulate unfair or deceptive acts and practices. 1491
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The Third Consumerism Era "The mid 1960's" 1498

Consumerism might have gained more momentum in the late 1930's but the Second World War diverted all attention to the problem of national survival. During the 1950's Vance Packard's "The Hidden Persuaders" created considerable interest in consumerism but the beginning of the third era is usually dated from John F. Kennedy's Consumer Message to the Congress in Spring 1962. President Kennedy presented his well known 1498.
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Consumer Bill of Rights which highlighted the right to safety, the right to be informed, the right to choose, and the right to be heard. 1506

In Canada, the Federal Government set up its Consumer and Corporate Affairs Department in late 1967. The provinces started drafting consumer legislation in the late sixties and all provinces had consumer departments in the 1970's. 1507 1508 1509 1510

The major events of the third era of consumerism in the United States were the birth of thalidomide babies, President Johnson's creation of a new White House post in 1964, Special Assistant for Consumer Affairs, the appointment in 1964 of Esther Peterson on the post, the publication in 1965 of Ralph Nader's best selling book Unsafe at any Speed, the high rate of inflation during the middle sixties, the publication of The Poor Pay More in 1963 by David Caplovitz, the passing of a number of acts including the Highway Safety Act of 1966, the Truth in Packaging Bill of 1966, the Truth in Lending Bill of 1968, etc. 1511 1512 1513 1514 1515 1516 1517 1518 1519

The Meaning of Consumerism 1521

Vance Packard was one of the earliest adopters of the term "consumerism". His usage of the word linked the word with strategies for persuading consumers quickly to expand their needs and wants by making them "voracious, wasteful, compulsive." 21 1522 1523 1524 1525

Day and Aaker used the term for the most common understanding of consumerism in reference to, "the widening range of activities of government, business, and independent organizations that are designed to protect individuals from 1526 1527 1528

practices (of both business and government) that infringe upon their rights as consumers."²² According to their interpretation, this view of consumerism emphasizes the direct relationship between the individual consumer and the business firm. The specific rights and how these rights come about is not really addressed in any significant way.

Kotler treats consumerism as "a social movement seeking to augment the rights and powers of buyers in relation to sellers."²³ Cravens and Hills offer a similar definition of consumerism as "a social force within the environment designed to aid and protect the consumer by exerting legal, moral, and economic pressure on business."²⁴

Peter Drucker thinks that "consumerism means that the consumer looks upon the manufacturer as somebody who is interested but who really does not know what the consumer's realities are. He regards the manufacturer as somebody who has not made the effort to find out, who does not understand the world in which the consumer lives, and who expects the consumer to be able to make distinctions which the consumer is neither willing nor able to make."²⁵

Buskirk and Rothe use the term consumerism for "The organized efforts of consumers seeking redress, restitution and remedy for dissatisfaction they have accumulated in the acquisition of their standard of living."²⁶

Mrs. Virginia H. Knauer, Special Assistant to the President for Consumer Affairs, considers consumerism to be "the watchdog for the new militant mood among consumers whose real spirit is 'let the sellers beware' in comparison to the age-old

caveat emptor or 'let the buyer beware'.²⁷

The Assumptions of a Consumer Antagonist 1554

To understand the treatment of consumer interests in consumerism it is useful to state the assumptions of a consumerism antagonist or an apologist for some of the failures of the marketplace. Note that this list was first published in a house organ of a major advertising agency in Montreal only four years ago. 1555 1556 1557 1558 1559

1. A major assumption presupposed antagonist roles of buyer and seller. The interdependence of the two is not considered, the significance of the marketing concept is discounted; and the efforts of marketing research to ascertain consumer wants are either unknown to - or ignored by the critic. 1560 1561 1562 1563
2. It is assumed that the seller deliberately obfuscates, that he is sophisticated in this art, and that confusion somehow results in patronage. 1564 1565
3. It is taken for granted that the seller has the financial resources to impose his ideas in the marketplace; competition is assumed away; and regulation is adjudged ineffective. 1566 1567 1568
4. The maximization of short-term profit is asserted to be the only goal of the seller. The seller - unlike other people in our society - is said to be completely insensitive to social needs; no connection whatever is seen between profit and 1569 1570 1571

consumer satisfaction.

5. If anything goes wrong in the marketplace, it is automatically presumed that the business firm, its management, and explicitly, its marketing operation, are at fault. The accountant, the engineer, the controller, and especially the blue-collar workman and his union are looked upon as uninvolved. 1573
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6. The buyer is categorized as a moron, incompetent to make sound purchasing judgements. Critics acknowledge that he was never better informed, better educated, or more skeptical. Yet somehow, they believe he loses his senses in the marketplace. 1577
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7. Yet another assumption holds that certain individuals and groups have been endowed with a supernatural ability to discern what is best for the rest of us. 1581
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8. It is assumed that acceding to demands of consumerists is either cost-less or cost-absorbable by the seller. Further, that any costs not only can be but should be borne by the seller. Or conversely, that the buyer will willingly pay a premium for products that are better for him - low-lead gasoline, for example. 28 1584
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The consumer advocates will recognize this apologist's tirade. The realist will recognize that many of the criticisms 1589

of the feelings of the marketplace in this statement are true in greater or lesser degree. What is more relevant is the writer's failure to grasp the fact that most consumers are disturbed by some of the points he raises. A more informed discussion of the concerns follow.

Some Statements of Consumer Interests

President Kennedy's Special Message on protecting consumer interests sent to the Congress on March 15, 1962 is perhaps the most quoted statement on consumer interests. In this message, the first ever delivered by a President on this topic, President Kennedy took note of the important role played by consumers in the American economy and the challenging problems that confront them.²⁹

The Kennedy Statement

In the message President Kennedy included the following as consumer interests:

1. The right to safety - to be protected against the marketing of goods which are hazardous to health of life. 2.
- The right to be informed - to be protected against fraudulent, deceitful or grossly misleading information, advertising, labeling or other practices, and to be given the facts needed to make an informed choice. 3.
- The right to choose - to be assured, wherever

possible, access to a variety of products and services at competitive prices, and in those industries in which competition is not workable and government regulation is substituted, an assurance of satisfactory quality and service at fair prices. 4.

The right to be heard - to be assured that consumer interests will receive full and sympathetic consideration in the formulation of Government policy, and fair and expeditious treatment in its administrative tribunals.

These four rights of consumers, although broad, are useful, guiding principles.

The Day and Aaker Statement

Day and Aaker consider the following three as major consumer interests:

1. Protection against clear cut abuses. This encompasses outright fraud and deceit that are a part of the "dark side of the marketplace", as well as dangers to health and safety from voluntary use of a product. There is substantial agreement in principle between business and consumer spokesmen that such abuses must be prevented, but there is often a wide divergence of opinion on the extent of the problem. As a result the government has taken the initiative in this area, usually after the divulgence of a

sensational abuse. This has been the case with much of the legislation dealing with drug, tire, auto, and pipeline safety and meat and fish inspection. Even so, this is the least controversial and oldest aspect of consumerism.

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2. Provision of adequate information. The concern here is with the economic interests of the consumer. The question is whether the right to information goes beyond the right not to be deceived, to include the provision of performance information that will ensure a wise purchase. Much of the controversy and confusion over consumerism revolved around this basic issue. The two polar positions identified by Bauer and Greyser are the business view that the buyer should be guided by his judgement of the manufacturer's reputation and the quality of the brand, versus the view of the consumer spokesman that information should be provided by impartial sources and reveal performance characteristics.

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3. The protection of consumers against themselves and other consumers. Some of the thrust behind consumerism comes from the growing acceptance of the position that paternalism is a legitimate policy. Thus, the National Traffic and Motor Vehicle Safety Act of 1966 is not concerned with

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the possibility that the buyer has an expressed but unsatisfied need for safety, and emphasizes instead that carelessness may have undesirable consequences for innocent participants. There is a sound basis in economic theory for such intervention whenever the action of a buyer serves only his own best interest and fails to take into account the effects on others. However, this principle is being extended to situations of "implied consumer interest" where the individual is deemed unable to even identify his own best interest (e.g., the mandatory installation of seat belts and the provision for a "cooling off" period after a door-to-door sale). This is a strong justification for the protection of inexperienced, poorly educated, and generally disadvantaged consumers. More controversial by far is the extension of this notion to all consumers on the grounds that manipulated preferences may be disregarded when the consumer is not acting in his best interest."³⁰

The Nader Statement

Ralph Nader may have overstated the problem but when he was questioned on how to pick and choose from among the many so-called conflicting consumer interests, he replied that they would be picked "on the basis of criteria as to how many people

are harmed, how serious is the harm, whether it is health, safety or economics, to what extent is the Agency to be intervened against getting its head in the sand and is not doing anything at all about it, and to what extent the time factor requires imminent action. There are so many major gross abuses of the consumer's rights in the country that the Agency for Consumer Advocacy will be very busy on the hard, crude edges of consumer abuse. They are going to be dealing with the big abuses. It is hardly anticipated that they are going to have time to deal with the areas of gray or the relatively small sectors of consumer abuse. They are going to be dealing with harm from adverse drug effects to perhaps hundreds of thousands of people, they are going to be dealing with food contamination problems, they are going to be dealing with radiation exposure by consumer products, they are going to be dealing with recall policies, meat and poultry inspection practices and the like.

"I do not think they are going to have a very difficult time finding a consumer consensus."

"I might add, Senator Ribicoff, that it will be much easier for the ACA to ascertain the consumer interest than it has been for the U.S. Department of Agriculture to ascertain the farmer's interest preferring, as it has over the years, big agribusiness over small farmers and sharecroppers or the U.S. Department of Commerce, which has tended to prefer big business interests over the needs, when they are competing, of small business interests."

An important problem of consumer interests in consumerism is their scope. The O.E.C.D. Committee on Consumer Policy

identifies consumer interests either as physical or economic. The consumer interests in the physical sense include safety and health. These two consumer interests are considered so important in O.E.C.D. countries that "at the present time, even Member countries which do not have a general consumer protection policy do have a fairly full range of measures whose purpose is to safeguard consumers' health and safety."³²

The protection of consumers economic interests includes "fraud and deception by unscrupulous traders...control of aggressive sales methods, banning of deceptive or misleading sales techniques, and inaccurate or misleading advertising, and measures for controlling consumer credit."³³

A Statement of Consumer Interests 1702

A synthesis of consumer interests which has been derived from the literature review for this chapter has been classified under the following heads: 1703

1. Safety and Health 1706
2. Economic 1707
3. Ecology The Furukashi and McCarthy exposition was most useful in this synthesis, their work being a synthesis of existing materials. 1708 1709 1710

1. Consumer Interests - Safety and Health 1711

The discussion of safety and health hazards is not as simple a task in all cases as it appears on the surface. A number of value judgements are involved. Freedom of choice is also involved in these decisions. Furukashi and McCarthy while talking of the 1971 U.S. ban on cigarettes advertising on 1712 1713 1714 1715

television and radio say, "Such restrictive measures pose a threat not only to those who earn their livelihood through the manufacture and distribution of restricted products, but also to consumers who enjoy these products. Some people argue that in a free society individuals should be able to make a free choice as to what they want to buy, even if it may be harmful to them."³⁴

The question of consumer freedom was raised by a tobacco grower in a hearing in U.S. Senate on cigarette advertising and labeling. "We people who grow tobacco and our predecessors for many generations have believed that we were in an honorable business. We have believed that in important respects tobacco was beneficial to the user. There seems to be no doubt that the use of tobacco in its various forms is relaxing, is enjoyable and is conducive to a measure of contentment.

"Today is a day of tensions as never before..Who has tried to measure the relief from present day tensions which may be credited to tobacco? Who can predict what would be the explosion of tense people if there were no relaxing agents or avenues?.....For more than three centuries men and women have enjoyed the relaxation, the mental contentment and the pleasure that they have found in smoking....

"The decision to smoke or not to smoke, the decision as to how much to smoke, are decisions for each individual adult. Each must and does balance the considerations for and against smoking."³⁵

Interesting figures were quoted from a report prepared by the Ford Foundation in November 1963. "The average life expectancy is now 70 years, compared with 63 in 1943 and 57 in

1923. For the first time, the figure is over the generally
 accepted retiring age of 65. Never before have old people
 comprised such a high proportion - 1/10 - of the nation's total
 population.³⁶ This happened despite pollution and a lack of
 purity and healthfulness. The presence of poisons, irritants,
 harmful chemical preservatives, and dangerous drugs did not
 reduce the average life expectancy.

The question of where to draw a line when safety is
 involved is difficult to answer. Numerous examples of free
 choice and safety such as wearing of safety belts by motorists
 and motor cycle helmets can be given. When Ford tried to sell
 safety belts as an optional automobile equipment in the 1950's,
 buyers did not respond. Many who had them in their cars did not
 use them.

An interesting case of limiting the freedom of consumer
 choice was Prohibition in the United States. Over fifty-seven
 years ago (in 1919) the U.S. Government decided that it was in
 the public interest to prohibit, or restrict the importation,
 manufacture, sale and consumption of alcoholic beverages. The
 freedom of choice of consumers was legally eliminated.
 Thousands of persons were convicted yearly and fined and sent to
 jail for violation of the Volstead Act. The noble experiment
 did not work and ultimately the public interest was redefined
 and the Volstead Act repealed.³⁷

Puruhashi and McCarthy raise an important question in this
 regard. "The basic issue, here, therefore, is whether a market
 directed system will safeguard the consumers' interests.
 Implicit in the arguments of some critics is the notion that

consumers' purchase decisions in the marketplace do not necessarily reflect their best interests. If this is the question, perhaps we need some legislation. But who is to decide what is in the public interest in regard to product quality, and how are they to decide? These are not just academic questions, because any regulations or legislation must provide some guidelines for action. Such guidelines are also necessary for meaningful discussion about product warranties and guarantees."³⁸

In reply to all these questions it can be said that product safety and health hazards are not individual problems. It is the society who ultimately bears the cost of lost-working days, medicare, police and court time, insurance, and unemployment and welfare payments. Thus society has a right to restrict consumers' freedom of choice. But everyone may not necessarily agree to this kind of reasoning. (It most likely becomes a political decision, tempered, hopefully by benefit/cost analysis and by the ability to get the governed to accept the final decision. Authors' comment.)

2. Consumers' Economic Interests

Economic interests relate to monetary loss to consumers due to poor products or deceptive marketing practices. An interesting example given by Ralph Nader was that of automobile bumpers "those chrome, ornamental eyebrows - are designed today, and for the past several years, to maximize repair costs, and knowingly so....bumpers cannot protect the vehicle in collisions exceeding 2 miles per hour and some bumpers fail even that

standard. Recently, a Michigan insurance executive released a study that indicated an annual loss to motorists of 1 billion due to ornamental bumper...The auto executives know this but they go on looting the public by design. A billion dollars is diverted from other purchases such as food, furniture, medicine and clothes."³⁹

Another example given by the author is that of price fixing. "Price fixing keeps prices higher for customers than they would be if competition prevailed. The electric price-fixing conspiracy involving GE, Westinghouse, Allis-Chalmers, and other companies was prosecuted in 1960-61..It cost consumers over a billion dollars. It cost GE, Westinghouse, that is, about \$500 million in punitive damage settlements and this sum was promptly written off as ordinary and necessary business expense."⁴⁰ It was perhaps because of these facts that "Pricing issues were associated with consumerism by over 80% of the women and by approximately 60% of the students and businessmen."⁴¹

Consumerism's literature is full of examples of poor products and deceptive marketing practices. "The Jungle, 100,000,000 Guinea Pigs, Your Money's Worth, The Waste Makers and Unsafe at Any Speed were mentioned previously.⁴² Even new products have defects. Senator Hart concluded from his hearings that, "New automobiles are a frequent source of consumer complaints. Knobs, handles and switches fall off. Windows and doors leak profusely. Hydraulic accessories seldom work."⁴³

Products are not what their names say they are. Lemon cream pies contain neither lemon nor cream. They are just pies. The Great American Dream Machine, a T.V. show of a few years

ago, satirized a familiar brand of lemon cream pie: "It's made of good old monosodium phosphate - the same as used in laxatives and cleaners - plenty of fresh whey solids, guaranteed gum from the Texas grasslands. But you will note, no lemon, no cream, no eggs, just pie."⁴⁴

The economic interests of Canadian consumers are not served in any way that can be called better compared to other developed countries. "While bank robbers steal only a few million dollars a year, dishonest auto-repair shops can steal several hundred million. Because cars are so complex it's easy to get victimized. The Canadian Broadcasting Corporation proved it in 1970 by taking a vehicle that had been pre-tested and certified "fault-free" by a highly trained mechanic in two diagnostic centres. The first said the car needed \$70 worth of repairs. The second gave a clean bill of health to the components the first clinic said were faulty, but decided that others needed replacing at an estimated cost of \$103."⁴⁵

The consumer economic interest is in being able to have effective power to exercise their rights in the marketplace.

The statements of misuse of market power presented above, while not uncommon, are cited as indications of the difficulties of consumers in exercising their rights in the marketplace as equals with sellers. How a system to assure redress on both sides of the question (abuse of rights by either consumers or sellers) is a critical one but one which is not the subject of this research.

3. Consumer Interest in Ecology

The consumerists are showing increasing interest in ecology, that is in the consumption of the environment. In one survey, 85% of the respondents considered pollution to be America's number one problem, and three out of four thought it is industry's responsibility to clean up the environment.⁴⁶ The feelings about ecology are growing to the extent that a California banker has suggested that top executives of companies that pollute the environment be sent to jail for up to five years.⁴⁷

Day and Aaker feel the same way. "Today, consumerism is becoming increasingly concerned with the quality of physical environment the impact of marketing practices and technology on the ecology. Ecology is the systematic approach to nature, the study of how living organisms and the non-living environment function together as a whole or an ecosystem. Such an understanding gives meaning to the idea that one man's gods are somebody else's garbage, that there are no such things as no-return containers - they do return somewhere. It is a recognition which has finally emerged from our long standing concern with built-in obsolescence, and all the attendant problems which contribute to pollution in a "disposable society" and a "throw-away culture".⁴⁸

Air, water, and noise pollution have become an important part of consumer interests. "More recently, consumerism has become identified with the widespread concern with the quality of the physical environment. The problem of air, water, and noise pollution have become increasingly salient as the tolerance of the public for these abuses has decreased.⁴⁹

Lerner, an economist, feels that "we are discovering ecology - that the rivers are not infinite sources of clear water, that the ocean itself is not an infinite receptacle for our garbage, and that the air is exhaustible too."⁵⁰

Kotler thinks that the pollution of the environment reminded the consumers of the Malthusian spectre. "...the environment was progressively exploited in the interests of abundance. Observers began to see that an abundance of cars and conveniences would produce a shortage of clear air and water. The Malthusian spectre of man running out of sufficient resources to maintain himself became a growing concern."⁵¹

Ralph Nader also pointed out the hazards of pollution. He quoted Dr. Arlie Havargen-Sait for discovering a definite link between automobile exhausts and smog conditions in Los Angeles. "This pollution contains the most serious toxic contaminants which are associated with a significantly higher incidence of morbidity and mortality from emphysema, chronic bronchitis, lung cancer, and heart disease. In property damage due to air pollution, the United States Public Health Service estimates a loss of roughly sixty-five dollars per capita each year, or an even eleven billion dollars altogether.

"Pollution corrodes metals, deteriorates rubber products, erodes concrete and building stone, soils a great variety of materials, and deposits dust and soot on highly sensitive machinery and instruments."⁵²

Automobiles are not the only source of pollution. Besides the business firms, the consumers themselves are a big source of pollution. The role of personal consumption in the

deterioration of our environment is of growing concern. Individuals in North America create as much solid waste as manufacturing does. Numerous consumer products, such as automobiles, laundry detergents, glass and aluminum containers, pesticides and fertilizers, have been identified as significant contributors to environmental deterioration."⁵³

Consumerism is concerned not only with today's consumer interests, but also with the impact of consumption on the coming tomorrows. Any increase in population loads the landscape with more and more beer cans, junked autos and other garbage. The result of mass marketing is massive filth.⁵⁴

The issues of pollution are not clearly black or white. There are many grey areas. Consumer's interests clash with those of other consumers as well as those of manufacturers. Furuhashi and McCarthy illustrate the nature of this conflict with the help of a case involving pollution of a lake by several manufacturers.

"Individual firms have located around the shores of a particular lake to make use of the nearby raw materials, water and labor. In a microsense, the manufacturers are doing 'good' - providing employment to workers, profits to their shareholders, and products for the benefit of interested consumers.

"Through the normal production process, however, the various companies may pollute the lake and thereby diminish its usefulness to all other users, including some of the people who have jobs in the factory. Hence, logically there may be a conflict between the workers' interests (micro), as employees of

the factory, as well as the consumers of paper products, and
 their interests (macro), as 'consumers' of the local 1916
 environment - that is, clean water for swimming, boating, or 1917
 fishing. 1918

"If laws are passed to limit the freedom of individual 1919
 firms, the firms may have to raise their prices, thereby
 affecting some consumers because rising costs usually must be 1920
 passed on to consumers. Alternately, the firms may have to 1921
 close their doors and fire all the workers. The lake will 1922
 return to its original beauty, but the society must do without 1923
 the paper products. Former employees may not be able to find
 other work, and will have to be supported by those still working 1924
 within the macro-system. And the resources invested in the 1925
 plants will be wasted."55 1926

Acceptance of a legitimate consumer interest in the 1927
 environment they consume is relatively easy. What is difficult
 is the determination of the limits on these interests and when 1928
 the collective interest of society takes precedence over the 1929
 individual interest of a consumer. 1930

The above discussion of consumer interest in consumerism 1931
 shows that under this approach consumer interests are relatively
 well defined, but consumerism does not provide solutions to all 1932
 the conflicts that arise in determining the preference that 1933
 should be given to consumer or producer interests. As mentioned 1934
 earlier, all issues are not black or white. Despite the 1935
 difficulties in resolving the conflicts, the Jeremiahs of 1936
 consumerism will go on saying to the producers: "I am a human 1937
 being; do not fold, bend, mutilate, violate or pollute me."56 1938

Summary and Conclusions

A review of the consumerism literature has provided much greater insight and definition of the consumer interest than have the economic or the market concept literature.

The ability to have effective power to exercise their rights in the marketplace is a cornerstone of the consumer economic interest. There are many reasons why consumers do not have effective power. They range from the consumer not making good choices when all the information is available for deciding (because of sloth and disinterest to excessively complex products) to not being allowed to have access to product information to outright deceit about performances and other characteristics. The Ford Pinto exploding gas tank is an example of the latter current at this writing.⁵⁷

A working definition of consumer rights which evolved in this chapter were the right to choice, safety, information and to be heard or variants of these rights. The interest of consumers in consumption of the environment cited in the chapter provides a scope to the consumer interest which, up to this point, we have not been able to delimit. The discussions in Chapter 7 of the political process as a delimiting mechanism for the boundaries of interests and in Chapter 6 of the moral-philosophical discussions surrounding individual and societal rights under utilitarianism and the social contract theory will help to delimit and expand the concept of the consumer interest.

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To be updated and tightened up. Have lots of recent material which structures and sharpens problems with consumer information as it now is conceived and presented.

Chapter II
THE INFORMATION APPROACH
TO CONSUMER INTEREST

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There has been a group of writers who have attributed many of the problems which consumers experience in the marketplace to a lack of information. The assumption of this group is that provision of sufficient, relevant and timely information will go a long way towards solving the major problems faced by consumers.

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While we may not, in fact do not, agree with this view it is a useful perspective to use in our search for a definition of the consumer interest. The reader will see that some of the authors included under this heading have gone to great pains to point out that the problem is not the provision of information, important as this may be, but it is the ability to use the information which is critical to the consumer being able to exercise his or her rights.

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A. The Need for Information

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The "right to be informed" is a very important area of consumer interest. Norman Kangun while discussing the need for information says, "Informed consumers are essential to the fair and efficient functioning of a free-market economy....Technology has spawned a torrent of new and improved products that make it exceedingly difficult, if not impossible, for consumers to keep

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fully informed about them. Can shoppers be expected to differentiate between the performance characteristics of canister and upright vacuum cleaners, the qualities of rayon blend and acrylic blankets, the relative merits of disk and drum brakes on automobiles,...the cleaning power of phosphate versus phosphate-free detergents?1

Stern considers information essential for the allocation of resources toward the achievement of social goals. "Our economic system is based on the belief that free and intelligent decisions in the marketplace, rather than by government fiat, will produce the most efficient allocation of resources toward the achievement of private and social goals. To exercise free and intelligent choices in the marketplace, consumers must have access to terms of sale and product information."2 Despite this importance of information to consumers, he laments, "...it is likely that the loss of personal relationships in the marketplace has reduced both the availability and the reliability of product information."3

"Technological changes make obsolete whatever information consumers have. Technological change is so rapid that the consumer who bothers to learn about a commodity or a service soon finds his knowledge obsolete."4

With the growth in the number and complexity of products the consumer has less time to undertake effective shopping and information search. Therefore, with the increase in the number of goods ignorance also increases. "With economic development, the variety of goods increases so that ignorance per good probably increases. The marginal cost of complete information

is greater than the marginal benefit of complete information, so that some ignorance per good is justified. This problem of growing ignorance is highlighted when one contrasts the simple budget of our forefathers in colonial days with the budget of the family today, or when one contrasts the simple world of the consumer in Guatemala with that of the consumer in the United States. In Guatemala the family is poor, the number of goods is low, and ignorance per good is low."⁷

Assumptions in the Information Approach

When information is said to be an important area of consumer interests, certain assumptions are implied for consumers as decision-makers. While discussing the quality and quantity of information available to the consumer Brown says, "In all of these discussions and in writings that have appeared in numerous journals is an underlying assumption that the consumer is a rational decision maker. Moreover, the assumption that the consumer needs and wants information and is capable of its analysis is also implied."⁶

The question of consumer rationality is highly debatable. The consumer reacts to information not only with his intelligence, but also with his habits, traits, attitudes, and feelings. In the theoretical framework, the consumer is seen as optimizing his performance in a given "task environment" by processing the available information as effectively as possible. Effectiveness is constrained by such processing limitations as a short-term memory capacity of only five to seven items.⁷

It is not clear from the available evidence that

information has a significant impact on behavior. "A curious feature of the growing demand for more information is the paucity of concrete evidence that past disclosures have made significant differences in consumer or market behaviour. ...The lack of evidence on the behavioral effects of information disclosures is due to the relative newness of most requirements and the inherent difficulties of designing and implementing the appropriate evaluation research. The factors are compounded by a lack of conceptual basis for understanding how buyers use information and confusion as to the objectives to be served by providing additional information."⁸

Richard H. Holton, former Assistant Secretary of Commerce, made a valid point about the capability of consumers to make rational decisions. "The point here is that the consumer is a part-time amateur buyer facing in the marketplace, eyeball to eyeball, a whole series of full-time professional sellers. Given the wonderful breadth and depth of selection of goods and services which our economy generates, the time required to be a rational consumer of everything would surely be unreasonably large. In short, it may be irrational to be a rational consumer of everything; yet at least some consumers want to be able to make wise choices easily."⁹

Eric Schnapper points out another weakness of the assumption of information approach. He hypothesized that information disclosure requirements have the least effect on those buyers who have the greatest need for protection of their interests. "Information disclosure requirements have been described as protection or assistance in making more informed

choices, are more likely to lack the characteristics that will allow them to take advantage of the information because:

1. Low income consumers are often unaware of the benefits of comparative shopping.^{9A} 2180
2. They lack the education and knowledge necessary to choose the best buy, even if it were available. 2182
3. They often lack the freedom to go outside their local community to engage in comparative shopping. 2183
4. Nothing in their experience has reinforced the benefits of seeking better value for their money; consequently the low-income buyers lack the motivation to make improvements in their situation.¹⁰ 2184

Mrs. Virginia H. Knaur, Special Assistant to the President on Consumer Affairs, goes further by saying, "Consumers in all income levels are among the victims of unfair and deceptive practices, including those of us who may consider ourselves sophisticated in the marketplace."¹¹ 2185

The Role of Information in Serving Consumer Interest 2194

Despite the limitations of information in serving the consumer interest the fact remains that information does play an important role in improving the decision making ability of consumers. Perhaps Stigler had this in mind when he wrote "Ignorance is like subzero weather: by a sufficient expenditure its effects upon people can be kept within tolerable or even 2195

comfortable bounds, but it would be wholly uneconomic entirely
to eliminate all its effects. And, just as an analysis of man's
shelter and apparel would be somewhat incomplete if cold weather
is ignored, so also our understanding of economic life will be
incomplete if we do not systematically take account of the cold
winds of ignorance."¹³

The same author in 1961 complaining about the neglect of
information wrote, "One should hardly have to tell academicians
that information is a valuable resource. Knowledge is power.
And yet it occupies a slum dwelling in the town of economics.
Mostly it is ignored. The best technology is assumed to be
known, the relationship of commodities to consumer preferences
is a datum."¹⁴

According to Hirshleifer, the micro-economics of
information in a narrow sense

is an outgrowth of the economic theory of
uncertainty. Uncertainty is summarized by the
dispersion of individuals' subjective probability
(or belief) distributions over possible states of
the world. Information consists of events
tending to change these probability
distributions. A rather different concept of
"information" is employed in communications and
statistical theory, according to which a
dispersed probability distribution is called less
"informative" than a concentrated one. This
latter concept uses the term "information" merely

as a negative measure of uncertainty. But it is
changes in belief distributions - a process, not 2222
 a condition - that constitute here the essence of 2223
 information. Note that the economics of
 information is active where the economics of 2224
 uncertainty is passive. Here adaptation to a 2225
 given state of ignorance via optional "terminal"
 action is still in the realm of the economics of 2226
 uncertainty, in going beyond this to consider the 2227
 alternative of gathering more evidence prior to 2228
 terminal action, we enter the domain of the
 economics of information.¹⁵ 2229

One of the major considerations in minimizing uncertainty 2231
 through the collection of information is the cost of search.
 This cost need not be equal for all consumers, of course: aside 2232
 from differences in tastes, time will be more valuable to a 2233
 person with a larger income. If the cost of search is equated 2234
 to its expected marginal return, the optimum amount of search 2235
 will be found.¹⁶ 2236

Similar views are expressed by Cravens and Hills: "If we 2237
 assume that the consumer allocated his income to maximize his
 satisfaction, can we further assume that this objective is 2238
 achieved in the same way by all people? Obviously not...The 2239
 informational needs and desires of consumers vary from person to 2240
 person. For some, the economic and/or psychological costs of 2241
 additional information may be exorbitant when related to the 2242
 'returns'. For example, a person who values his time highly and 2243
 finds the shopping process annoying will be unlikely to incur 2244

these 'costs' to obtain information that would help him make a slightly better purchase decision. A shopper who enjoys the process (no costs) may desire and seek such information."¹⁷

The Sources of Information for Consumers.

The information available to serve the consumer interest can be classified in a number of ways. Hirshleifer while talking of possessors and seekers of economically valuable information in a market context says that the information seekers might correspondingly find it advantageous to produce socially "new" information by direct inquiry of nature (research) or to purchase "secondhand" information in the market. The possessor may find it preferable to give away this valuable commodity, to disseminate it without compensation.¹⁸

Cravens and Hills classify the information in a slightly different manner. "The primary information flows to consumers include promotional efforts of business (as well as varying responses to the consumerism movement), activities of government officials as reported by the news media, communication and interaction among consumers and their 'representatives' (both interpersonal and the media), and the availability of published consumer product ratings. These flows provide the basis for consumers' evaluation of products, as well as for their reassessment of the consumerism movement and indicates the crucial need for effective information flows to and from the consumer."¹⁹

In brief, one can say that the consumers have the following three major sources of information on products and terms of

sales:

1. Experience - Personal as well as the experiences of others. 2269
2. Business - This includes all forms of communication from business to consumers, e.g. advertising, sales promotion, personal selling and publicity. 2271
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3. Organizations other than Business - This includes information provided by consumers union, consumers research, government departments and consumer movement groups. 2274
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1. Experience and Consumer Interest 2278

Experience is the basic source of information for consumers. Information about products and terms of sale might come from a consumer's own experience or from the experiences of friends, relations, colleagues, neighbours, etc. through word-of-mouth. 2279
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The classical argument for experience is that the consumer is quite adequately protected because if they find the product of any particular seller unsatisfactory, that seller cannot survive in the marketplace. The consumer may gain quite satisfactory information from his own experience in the case of those items which he buys frequently, whose quality and performance characteristics are apparent either before he buys or after he has used the item once, and which exhibit a rate of technological change which is slow relative to the frequency of purchase. 2283
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Several of the items normally found in the supermarket might meet all three conditions for a particular consumer. But at the other end of the spectrum are a substantial number of goods and services which fail to meet one or more of these criteria. Automobiles, electric appliances, and clothing are clear cases in point. Their frequency of purchases for many persons is low, the quality is not apparent, and the rate of technological design change is fast relative to the frequency of purchase. Other examples of this kind are life insurance, casualty insurance, medical care, appliance and automobile repair, and home maintenance services. Funeral services are an especially interesting case.

In these cases where the three conditions are met, the process of learning can be rapid and quite complete. When the conditions are not met, the learning process may never be complete in a very satisfactory sense. The rate of technological change can so alter the body of information to be acquired by the prospective buyer that past information (experience) already learned will be obsolete.²⁰

Holton highlights another important problem of the buyers. "...the consumer typically buys such a large number of individual items over the course of a year, let us say, that he simply does not have time to become an expert buyer of everything. He faces an allocation problem, namely the allocation of his time. He must decide how to divide his time between the buying search and the many other ways in which he might spend his time. Within the time he allots for buying search, he must decide how to allocate time among the

alternative goods and services. He might be able to become an expert consumer of a few things, but for many goods and services he will be quite amateurish, and understandably so."21

Distortions and personal preferences make experience a source of information which cannot be or should not be used as the only source of information used in a decision. Many consumers recognize this fact and seek more information in those cases where their evaluation of the benefit and cost of information appears warranted.

2. Business as a Source of Information

Business firms have always been an important source of information for consumers. Business firms in North America (U.S. and Canada) spend about 2 percent of the gross national product on communicating with the consumers through advertising. This amounts to about 25 billion dollars yearly. Business provides information to consumers in the following forms:

1. Advertising

2. Personal Selling

3. Sales Promotion

4. Publicity

5. Labelling and packaging

a) Ingredients including additives

b) Life/Perishability through open dating

c) Warnings/Clarifications, e.g. cigarette 2336
health hazards, flammability.

6. Unit pricing 2337.

7. Truth in lending 2337.

The largest share of the expenditure for providing 2339
information to consumers goes to advertising. Advertising is
charged with deception, puffery, falsehood, misrepresentation, 2340
etc. These charges are not new. In Sinclair's Your Money's 2341
Worth the consumer is pictured as an Alice in a Wonderland of 2342
"conflicting claims, bright promises, fancy packages, soaring 2343
words, and almost impenetrable ignorance." In place of facts 2344
about the merchandise the consumer is showered with meaningless 2345
phrases and affected to greater or lesser degree by the 2346
manipulation of demand through the channels of advertising, 2347
salesmanship, and sales promotion. Although we all are aware of 2348
much useful information which is provided by advertising, we
know that many of the charges of manipulation and distortion are 2349
justified. 2350

Peter F. Drucker, while tracing the origin of distrust of 2351
business, blames advertising. "When I look at advertising, I
know perfectly well why the consumer doesn't trust us. Not 2352
because we scream so much, but because we are talking about 2353
things that are meaningless to the consumer...We have not 2354
realized that the very abundance, and very multiplicity of 2355
choices creates very real problems of information and

understanding for the consumer. We have not looked at our business from his, the consumer's, point of view."22 2357

Buskirk and Rothe think that in advertising the emphasis is on imagery rather than information. "The...problem is not fraudulent or deceptive practices for the most part, rather, the problem is improper or nonexistent communication. This seems to be incongruous since communication efforts - primarily advertising - exist in great abundance. However, communications between the firm and the consumer emphasize imagery at the expense of information."23 A study by Pollay of the information content of Canadian and U.S. television advertising confirms the low information content of this medium.23A 2359 2360 2361 2362 2363 2364 2365 2366 2367

Sam Sinclair Baker, himself an adman, calls advertising 'permissible lies'. "Why does the tag on nationally advertised Mary Jane Dresses read: 'NO IRONING' 'NO POOLING' For just one reason - because so many advertisers who originally promised 'no ironing' were indeed fooling. When 'permanent press' came along, women were wary because they had been fooled so often in the past. Advertisers like Bloomingdale's department store had to reach for a bigger-than-before lure: 'Now TRULY no-iron'." 2368 2369 2370 2371 2372 2373 2374

"During my years in advertising I fooled myself. I was aware of fakery, of course. But I didn't realize consciously the vast amount of 'fraud' perpetrated in ads, including many of my own efforts. The adman becomes so accustomed to using the permissible lie that it becomes his natural approach in creating an ad and selling a product...Give an advertiser an inch and he'll drive through a yard of 'iffy' promises."24 2375 2376 2377 2378 2379 2380

Despite the defense of advertising on grounds that it is 2381

"symbolic communication", "advertising is the art of wrapping the truth in imagination" and "that an advertisement is an ad, not a factual story",²⁵ the fact remains that advertising cannot provide the consumer with the unbiased information needed for rational decision making. The same charges can be laid against sales promotion and publicity. Senator Warren G. Magnuson has discussed in detail the use (or misuse) of personal selling, particularly door-to-door selling.²⁶ "Corrective advertising" is being used as a device for safeguarding consumer interests.²⁷

Packaging and labelling also are criticized for lack of adequate information necessary for decision making. The impact of legislation in the area of packages is showing signs of improvements.²⁸ The lack of information confuses the consumer in the selection of supermarket products.²⁹ Unit pricing may be an answer to providing the necessary information for serving the consumer interest, but the main problem is lack of promotional efforts on the part of distributors to publicize the concept of unit pricing. Numerous surveys have shown lack of awareness regarding unit pricing on the part of consumers.³⁰ There is no reason for sellers to publicize unit pricing when most of the highest profits are made on the highest unit priced items.

Awareness of the potential for misleading and untrue information transmitted by some business firms lead to enactment and enforcement of laws against these practices. Consumers in Canada especially can have greater faith in information provided by businesses because of diligent enforcement of these laws by both federal and, more recently, provincial governments.

Consumer rights to truth in business originated information

have not been perfectly defined although courts are finding it easier to approach limits which satisfy even outspoken critics. 2409
 Perhaps in this case the courts are where the answer lies, even 2410
 though the conservatism of the courts may not satisfy some 2411
 consumers in this matter. 2412

3. Comparative Information 2413

Comparative information provided by organizations such as 2414
 Consumers Union, Consumers' Association of Canada and federal
 and provincial agencies is an important source of information 2415
 for serving consumer interests. The argument underlying the 2416
 supply of such information is that consumers do not necessarily 2417
 have the time and/or skills to obtain, understand, and use all 2418
 the information that they may get about a product, therefore, 2419
 some impartial agencies must be established which can perform 2420
 these tasks with the requisite economies of scale. 2421

The origins of consumer information activity date back to 2422
 1927 when Stuart Chase, and F.J. Schlink, a mechanical engineer 2423
 from the American Standards Association, founded a comparative- 2424
 testing organization called Consumers' Research. The formation 2425
 of a consumers' association resulted from a book by Chase and 2426
 Schlink called Your Money's Worth, published in 1928, in which 2427
 the authors gave information on the testing of goods for the 2428
 armed services and government departments by the National Bureau 2429
 of Standards and detailed the savings in government expenditure 2430
 that resulted from the tests. Many of the goods tested were 2431
 consumer goods and Chase and Schlink argued that consumers 2432
 should have the benefit of tests similar to those carried out by 2433

the Bureau of Standards.

The public response to the book, and to a club set up by the authors, was so great that Schlink set up an association to provide information on goods and services for a yearly membership subscription. In 1929, the association had grown sufficiently for Schlink to give up his job with the American Standards Association. Consumers' Research set up its own laboratory facilities, increased the range and quality of services it offered to members, and prospered. In 1935, the staff and board of Consumers' Research split up as the result of personal disagreements resulting ostensibly from the issue of trade-union recognition. Some members of the board and part of the staff formed a separate organization called Consumers Union with the same aims and objects of the parent body. Consumers Union became the more successful of the two organizations, but Consumers' Research is still in existence.³¹

The number of subscribers and readers of the publications of these organizations is on the increase, but compared to the needs and numbers of consumers their usefulness is limited to a relatively small segment of consumers. Colston E. Warne, President, Consumer Union of the United States in 1974, gives some useful information about the characteristics of such consumers. "According to our latest count, the median income of our subscribers is \$14,336; the median age is 40; 63 percent are in a professional or managerial occupation and 79 percent attended college."³²

Hans B. Thorelli, who did original research on the characteristics of the users of such information found the

following as important characteristics:

1. He forms an education and income elite. He 2458
 has higher income and education than his
 neighbours in the matched sample, such 2459
 higher than the populace as a whole. The 2460
 higher his income and education, the more
 likely he is to use Consumer Report 2461
 information. He also tends to have a higher
 social status than his immediate neighbours 2462
 and is slightly older and more likely to be
 married; 2463
2. He is information-sensitive in general and 2464
product and consumer information sensitive
in particular. He reads more newspapers, 2465
 subscribes to and reads more magazines, and 2466
 is generally more sensitive to the problem
 of information availability and more 2467
 critical of advertising than average
 consumers. He is, however, somewhat less 2468
 likely to expose himself to radio and T.V.;
 he is particularly attracted to media with 2469
 content directed to consumer and product 2470
 activities and information, and has great
 interest in increased product testing and 2471
 labeling;
3. He is a curious blend of liberal- 2473
conservative. In a general way he expresses
 belief in the integrity of the individual 2474

and the honesty and efficiency of business.

Yet in a more specific context he is less amenable to such government activities as welfare and government "control" over business, but more favorable toward government involvement in almost all consumer related activities - obviously to some extent at the expense of business;

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4. He is a "rational" buyer in the traditional sense. He plans more and is cautious at accepting new products (though envisioning himself as rather influential over others in this regard). He uses more utilitarian, performance-related choice criteria in shopping, and finds price particularly important in buying the more expensive autos, despite his clear edge in income. He has less interest in criteria more generally involved with esthetics, status and convenience. He sets great stock in outside, "rational" information sources (particularly Consumer Reports) and is less likely to rely upon his own judgement as formulated either from past experience or personal observation;

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5. He is committed to Consumer Reports. He reads it far more regularly than any other magazine to which he subscribes; he sees

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himself as using it quite frequently and buying the brands it recommends (most often in the purchase of durable goods, least in convenience). He expresses satisfaction with its performance on all counts and would like to see more activity in the product testing area overall;

6. He has high standards as a buyer. He is more critical in all types of buying situations, not only with regard to products themselves and availability of information about them, but also about his own efforts at shopping;
7. He reduces his mistakes in purchase as a result of using Consumer Reports ratings. When he uses the ratings, he is better satisfied with the products he purchases. He is also better satisfied with information available in the purchase situation when Consumer Reports is involved, and better satisfied with his own shopping efforts;
8. He is a consumer "activist". He supports increases in a broad range of consumer policy activities, giving the most confidence to product testing and least to consumer education. He is generally favorable to government involvement in these areas, particularly in product testing and

information labelling but expresses no confidence in test runs solely by the government. After Consumers Union style consumer organizations, he would favor government-consumer combines then government-business combines for testing activities."³³ He calls them "The Information Seekers".

A recent survey by Bourgeois and Barnes found similar characteristics for Canadian consumers.^{33A}

The organizations providing comparative information are concentrating on those products where consumers need most help. "From the beginning, one of the central interests of Consumers Unions' membership has been the motorcar, an interest which has been well sustained over time. This interest has been so pervasive that few of our monthly issues fail to include some auto test. The second leading interest has been in the field of household equipment - the standard package of the refrigerator, washing machine, and vacuum cleaner, followed by the deep freeze, air conditioner, clothes dryer, and dishwasher. A consistently high level of interest is also felt in Consumer Union's articles on health and medicine. Another most popular feature deals with articles on economic and social policies as these affect the consumer."³⁴ One can find information on most of the brands which command a significant strength in a regional market.

Major problems in serving the consumer interest through comparative information include: the instability of brands, the

time lag between planning of a project and its final execution
 in the form of an article, the representativeness of samples 2534
 picked up from the market, the likelihood of lowering the 2535
 quality of a product after it was recommended favourably by the 2536
 tests, the temptation to manufacturers to increase the price of 2537
 a product whose test results were favourable, and the validity 2538
 of durability forecasts. Despite these limitations, it can be 2539
 said that comparative information is a type of information 2540
 consumers need to safeguard their interests. 2541

A final but important finding from the information approach 2542
 to consumer interest is that those least in need of help in 2543
 serving their interests as consumers, the well-off middle and 2544
 upper class, are those who take the greatest advantage of 2545
 comparative information. The logical outcome of this fact is 2546
 that if the interests of all consumers are to be protected, ways 2547
 of getting information transmitted to and used by lower income 2548
 consumers is needed. However, there can be a spillover effect 2548
 in that if manufacturers attempt to satisfy informed buyers, 2548
 less informed buyers benefit as well. This need should weigh 2549
 especially heavily in activities by governmental bodies to 2550
 provide consumers with comparative information. It is 2551
 interesting to see that the Canadian government is supporting
 research aimed at exactly this problem.³⁵

Summary and Conclusions

The information approach was not very fruitful in defining 2554
 the consumer interest even though the literature search
 unearthed some interesting problems in protecting that interest. 2555

The need for information for rational decision making in a marketplace with the wide variety of technically sophisticated products available to North America is patently obvious. Less obvious but probably more important is the ability of consumers to properly evaluate information and to act rationally when making decisions.

Information gleaned from personal experience, from business through advertising and other promotional activities and from consumer supported or governmental organizations are all used in the consumption process. Those consumers most ably equipped to use information from all sources, the middle and upper income groups, are those who need it least but those who use it most often and most effectively. The logical extension of this fact is the need to find ways of getting information to lower income consumers so that they can better protect their interests in the market place. We do not know in any practical way what information is needed, what form it should take and when it should be provided to help improve consumer decision-making.

While the literature reviewed in this chapter did not help in more precisely defining and limiting the concept of the consumer interest it did highlight the importance of information in exercising that interest in the market place.

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Chapter V

THE LAW AND THE CONSUMER INTEREST

I am you
Said the Law.

Are you me
As I want to be?
I don't even know
Who you are.

I speak for you
Said the Law.

You speak for me?
Who told you you should?
Who told you you could?
How can this thing be
When I'm not the same as before?

I was made for you
I am made by you
I am human too
So change me if you will
Change the Green to Red
Shoot the ruling class
Stand me on my head
I will not be dead
I'll be telling you Go
I'll be telling you No
For this is the Law
Said the Law.*

*(From F.R. Scott, "This is a Law," The Dance is One, McLelland & Stewart, Toronto, 1973, pp. 13-14.

The excerpts from Frank Scott's poem conveys succinctly that we through law, individually and collectively as a society, order our affairs. The law is the most formal and most precisely stated set of rules for prescribing the accepted behaviour of society. It also prescribes many of the penalties to be imposed for deviations from acceptable behaviour. As hard as lawmakers try to be precise, to elicit and interpret the facts at issue, to allow for situations not anticipated by its drafters and to allow for changing values of society, a system of courts has been set up to interpret and administer the law.

In addition to its major value of letting people know what behaviour is acceptable, the law also is specifically designed to adjudicate between the interests of parties to a dispute. Members of the legal profession have been in the forefront of many developments in the consumerism movement both in using remedies in the law to redress inequities in the marketplace and in advocating and designing new legislation in areas the law has been found inadequate for consumers.

This chapter investigates both the theory and practice of law in defining the dimensions and representing the consumer interest. It is divided into three sections, the first is a brief definition of the law, how it operates and the philosophical basis in which it has developed in the legislature and the courts. The second and largest portion of the chapter describes and discusses the more important laws and legal concepts affecting consumers and the consumer interest. The final section discusses the politics

of consumer interest legislation.

What is the Law?

The law affecting most North Americans is made of three components, the common law, statutes and statute law. The common law is made up of judicial decisions about what is acceptable and correct behaviour between parties to an action. Much of the law of contract, has not been enacted by statute but has evolved over the centuries and it reflects the culture and attitudes of fairness as these have evolved over time.

(*In Quebec, as in most of the world outside of North America and the British Commonwealth, the system operates under civil law. In this system all law is codified and very little is left to judicial interpretation. Because language at its best is ambiguous there is some judicial interpretation but major changes to laws have to be enacted by legislatures.)

Where there is no precedent with common law or when legislatures wanted to change or direct the behaviour of people they have enacted statutes. These statutes may enable completely new types of behaviour, or alter the direction of societies' activities, or may be enacted to change the common law more rapidly than the Courts have seen fit to do. The statutes may also be used to fill in the interstitial areas in the law where the Courts have not chosen to rule.

Statute law is the term used to describe judicial interpretation of statutes. No one really can be certain about the meaning of a law until it has had judicial interpretation, until it has been tested in the Courts. Statutes, because of their normative effect is guiding behaviour, often are interpreted and followed in ways which are assumed to be correct only to have a judicial interpretation dramatically change such behaviour when finally tested in the Courts.*

(See, T. Gregory Kane, A Study on Law Reporting in the Commonwealth, Commonwealth Secretariat, Marlborough House, London, 1975, pp. 2-5.)

An example of augmenting and expanding the common law is the various trade practices acts which prohibit false and misleading

advertising and other types of marketplace behaviour. The Courts were not willing to convict business persons for misrepresenting products or their terms of sale except in the most flagrant and fraudulent cases. The general public and legislators in turn enacted laws which gave direction to the Courts about was considered false and misleading and prescribed penalties to be assessed for convictions under the act. The present federal laws on false and misleading advertising have gone through several changes to increase their effectiveness. The laws were first enacted to supplement the common laws of fraud and deceit. The ability to obtain convictions under the early statutes as reflected in the statute law which developed around those laws led to reuniting of the statutes so that the Courts were further directed as to what the public considered false and misleading. Together, the common law, statutes and statute law now direct advertising behaviour and impose sanctions for violating the

(See, Combines Investigation Act, Sec. 36, Ottawa, 1976, and The British Columbia Trade Practices Act, S.B.C., 1974, C. 96, Sec. 2.)

In another example, a recent case in British Columbia decided that the Boiler Marketing Board did not have the power to exclude or to prescribe the amount of chickens to be imported into the province nor to prescribe the price at which that imported product was to be sold. The Board had done both, acting on its interpretation of the legislation empowering the formation of a marketing board. The practice had been frequently used for a period of years.

(Kelly, Douglas Company Ltd. v. B.C. Board Marketing Board, British Columbia Law Reports 1977 (3), pp. 69-72.)

The law, then, is how we order our affairs. It prescribes rules of behaviour in all facets of our personal and public life. It is made up of the common law, statutes and statute law and, as we will discuss in detail in the next Chapter, statutes are highly influenced by the political process. They are used both in expanding and directing the economic, social and political dimensions of society as well as in filling the intersocial areas where the common law does not work as well in ordering affairs and prescribing behaviour as groups in society think it should.

Philosophical Conflicts in the Law

A common element in consumer dissatisfaction is a frustration born of power imbalance. Individual consumers feel their rights to redress in the marketplace, to economic justice, to a "fair" piece of the resources of a society are not possible because either they do not have rights and the ability to exercise these rights for redress or their rights are dominated by the power of a few. A small number of people are often able to sway political action in their favour and there is no countervailing power of the majority whose rights are abridged in the process. This is an often heard criticism of large government, and large, impersonal bureaucracies (public and private).

Over the last 200 years the moral philosophy of utilitarianism has been the basis for developments of laws and justice in the Western world. (J.S. Mill, Utilitarianism) The general concept underlying this philosophy is that governments work for the greatest number of individuals. A corollary to the philosophy of the

greatest good for the greatest number is the erosion of individuals' rights for the greater collective good. It is all too easy under this philosophy to violate minority rights with a resultant despotism by the majority. In general, any "Bill of Individual Rights" is open to erosion under utilitarianism.

Some consumer advocacy activity is going to have to be schizophrenic in nature. Because of the need to delineate and protect individuals' rights as consumers and their freedom and liberty to make choices on the one hand and the desire to prescribe undesirable or unsafe production behaviour, on the other, the courts and consumer advocates will have to balance between insuring individual rights and the proscription of those rights in the interests of the many. This is not a problem unique to consumers. Many persons feel there is a continuing and escalating suppression of individual rights by the majority under the thesis of utilitarianism. The same thesis is used on the other side of the argument in the establishment of statutes where those show behaviour is to be limited by the statute avow that their and freedom to act reduces the range of choice for consumers who ought to have a wide range of choice.

The philosophical theme which appears throughout this chapter is similarly schizophrenic in that some of the laws described here strengthen the rights of consumer as individuals to choice and to an increase in their ability to obtain redress in the marketplace or better representation in the policy formulation and regulatory process. By proscribing behaviour of business firms there is a real potential of reducing the possible alternatives of individ-

uals to choice and to the satisfaction of individual needs. Another thrust of the laws and efforts of lawyers in defining and expanding the consumer interest in the law is ensuring that regulators understand and critically evaluate their actions on consumers as well as on the special interest groups being regulated. There is the feeling that a preponderance of emphasis has been placed on the effects of regulation on the few being regulated and not enough on the many who are effected by regulatory activity. A very simple example of this is the prohibition by the Law Societies in Canada of lawyers advertising. We submit the real concern is over the effects of advertising on increasing competition among lawyers and not the ositive effects on the public who would learn about services, prices and lawyers willing to provide these services.

A final illustration of the conundrum facing the consumer lies in the "social contract" philosophy which implies a "bill of rights" for individuals which is guaranteed and which may not be abridged.*

(*See John Rawls, A Theory of Justice, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, 1971 and Norman Daniels, ed., Reading Rawls: Critical Studies of a Theory of Justice, Basil Blackwell, Oxford, 1975. Basic to the "social contract" is the requirement that, "Each person is to bank an equal right to the most extensive basic liberty compatible with a similar liberty for others." Rawls, op. cit., p. 60.)

How does one decide that the rights of some individuals, whether producers or consumers, should be abridged for the good of the many? For example, we require exhaustive tests of drugs before they are released for public use and we establish standards for food products. Furthermore, we require that information about product ingredients be printed on labels. Manufacturers argue that informative labelling may cost more than any benefit that will

accrue to consumers.

A common fallacy in the evaluation of the effects of legislation is the assumption that the determination of whether such legislation should or should not occur should be based mainly on a cost/benefit evaluation using economic measures of the effects of that legislation. The argument does not recognize the basic rights of consumers to information about product ingredients or the effects of the use of a product, whether or not the information is used. This basic right is determined as being a basic right because in our particular society people believe one should know what is in things they buy. Conversely, the producers of products are regulated and their freedom, their rights to operate without constraint, is reduced. Furthermore, such constraint may reduce the variety and choice available to individuals who may not value the knowledge and safety provided by such legislation.

It is obvious that these types of social choice decisions are solved, not by philosophical arguments of basic, inalienable rights in law but in the political arena, the subject of the Chapter following this one. What this brief discussion of the philosophical basis of the law and some of the conflicts to be encountered points out is that the law attempts to balance individual rights and the history of individuals with a reduction in these rights for the collective good. This balancing takes place not only in the Courts but in the application of statutes in regulatory activities where interests of those being regulated and those affected by that

regulation is hopefully weighed in the balancing process.

Laws Affecting Consumers

The major areas of common and statute law affecting consumers is discussed in this section of the Chapter. They include the law of contract, sales of goods acts, safety, health and information, trade practices, regulation and regulatory activities and the access and use of the law standing before the Courts and by obtaining through the potential use of class actions. These laws, the ways they are enforced, changes made to them through judicial interpretation and their application by regulatory bodies delineate and define the consumer interest. It will be seen that the common law, which is reflected in the law of contract and in other areas described below, could not keep pace with the legal needs of a sociologically, economically and technologically exploding society. New statutes have been enacted to assist in organizing, directing and adjudicating of behaviour. We do not doubt that errors have been made but it is fascinating to see the range of this activity and to speculate on how it may be made to work more smoothly for all parties in the future.

Consumer Interests in the Law of Contract

The relationship in law between a buyer and a seller is a contractual one, which has been historically important for consumers for two reasons. First, the courts long regarded contracts as being freely entered into and thus irrevocable. Second, they tended to ignore factors affecting the circumstances in which

contracts were entered into. In special circumstances, where one of the parties involved could claim duress, undue influence unequal bargaining power, fraud or unconscionable terms and condition, one was free to go to the Courts for relief. These attitudes relected the prevailing philosophy of laissez-faire of the nineteenth century. It was held that, provided he were free to promote his own self-interest, no man would become more powerful than another. If a customer did not like the terms offered by one supplier, he would not contract with him buy with another. Law based on these principles was ill-adapted to the concentration of industrial power in large firms, monopolies and trade unions that has taken place since these principles were conceived.

Today, one party to a contract for the supply of goods and services may be a corporate body whoe legal experts have drawn up the contracts in their own favour. The individual consumer who is the other party, may be ignorant of the rights being signed away, or may feel there is no choice buy to sign away those rights since the goods or services in question which come from only one supplier - this situation is not infrequently the rule, rather than the exception in small, isolated areas with limited range of choice.

Courts have had to cope with the manifestation in contracts of unequal bargaining power, notably the exclusion clause. Exclusion clauses attempt to undermine the whole principle of a contract by taking away some, or all, of the liabilities in law owed by one party to the other. Such clauses have been a persistent feature of standard contracts, such as booking forms for travel and dockets for cleaners. By semantic acrobatics, the

courts in recent years have nullified the effect of exclusion clauses or rendered them superfluous by developing the concept of a fundamental breach of contract.

Courts more and more are looking at the purpose of the contract as a whole and have attempted to judge whether it has been carried out in the spirit as well as the letter of its particular clauses. For example, judges have held that the purpose of a contract for the sale of a new car has not been fulfilled when the car supplied had tires with retreads, a resprayed body, an engine which had done 50,000 miles or unreliable brakes. Yet this more equitable approach produces many border-line cases because the determination of a fundamental breach of contract depends on a combination of factors and the weight attached to each of these by a particular court.

While expansion of the scope of its view of the spirit of a contract is an aid to protecting and defining the consumer rights in such transactions, remedies in the courts are economically feasible only when a particular individual has a claim of sufficient magnitude to justify the expense of such action. Breaches of contracts for small amounts have left sellers in a relatively unassailable position even though the buyer may go to small claims court. Here, while one may make claims of up to \$1,000 in some jurisdictions, much time, energy, and apprehension faces an inexperienced individual using this method of redress. Furthermore, many persons are not aware of this legal avenue. Consumer education may expand its use in the future.

Most provincial governments have, in their consumer protection acts, put restrictions on door-to-door selling where duress, undue

influence, unequal bargaining process, and often fraud and unconscionable contract terms and prices are frequent.

(See, for example, British Columbia, Consumer Protection Act, Section 9, 10 and 11, 1976.)

The use of class actions, discussed later in this section, is another device which may be used to redress some of the inequalities in bargaining power between buyer and seller. We should not lose sight of the fact that most of our transactions take place in a laissez-faire environment where consumers are free to make choices, where the granting of custom is the buyer's choice and where most transactions do not need the courts as an arbitrator, buy are made in good faith and with satisfaction to buyer and seller. One only needs the Courts when conflicts arise. Consumers have not always been well, nor equitably more fairly served by the existing system in these situations.

Consumer Interest in the Sales of Goods Act

A sale of goods act makes explicit the various conditions attached to contracts between buyers and sellers of goods and services, whether written or oral. The two fundamental conditions of a contract of sale are the implied fitness of the goods for their purpose when this is clear at the time of sale and the merchantable quality of goods sold by description. While each province in Canada and each state in the United States has its own sale of goods act they are basically similar.

Requirements for fitness for purpose and merchantable quality are the foundations of consumer interests against the seller of goods. Consumer interests are safeguarded under these acts only

if the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required to show that the buyer relies on the seller's skill or judgement. The goods are supposed to be of merchantable quality, but if the buyer has examined the goods there is no implied condition as regards defects which such examination ought to have revealed.

In the village life of an agrarian society characteristic of the nineteenth century, with a manufacturing capability vastly different from today's mass production orientation, with a short channel of distribution as contrasted to manufacturers remote from consumers, the sales of goods acts were very basic and fulfilled the needs of that time. Complex products, mass production, advertising, and branding of most consumer goods has meant that, for most goods on sale, the buyer relies on the brand names and reputations of manufacturers rather than the skill and reputation of the local shopkeeper in product selection. When this reliance is misplaced redress is difficult. Some legislative changes in the sales of goods acts have been enacted to correct for changes in production and sales of goods and services.

(An example is the Saskatchewan, The Consumer Products Warranties Act, 1977, which is innovative in the fact that it imposes on the manufacturer and the retailer strong express and implied warranties of products, does not allow them to exclude or limit these warranties, and does not free the parties from the obligation should the original purchaser sell the product. Subsequent owners retain the rights of the warranties. It further binds the seller to statements of product qualities and warranties made by retail seller, manufacturer or agents or employers. This latter provision is evident in several of the consumer protection acts in the various provinces.)

Consumer Legislation in Sale of Goods

Because of the inadequacies of the traditional rights in the sales of goods acts new legislation has been enacted which encompasses both specific and implied guarantees of product uses and qualities as well as guarantees and warranties. The following assumptions underlying legislation enacted after 1965 reflect a change in attitudes from the 19th century as follows:

(a) A change of philosophy from "caveat emptor" or "let the buyer beware" to "caveat venditor" or "let the seller beware".

(b) Competition, without strict regulation, cannot protect consumer interests.

(c) Consumers are a weaker party compared to giant corporations. Hence they must have the support of law.

(d) Consumers know (or ought to know) the laws and they can (or should) use them.

(e) The consumers may not know the harmful effects of using certain products, therefore, they should be protected.

(f) The consumers are interested and can understand the information provided by the manufacturers as a legal requirement.

Some of these assumptions are debatable and are based on further assumptions about the behaviour of consumers in the marketplace, many of which are in the process of being researched. While the assumptions are and should be debated, researched and verified, there should be little debate that these assumptions are behind recent consumer legislation.

Safety, Health and Information

There is a wide range of laws affecting the safety, health and the provision of information to consumers. The latter includes packaging and labeling rules and regulations, weights and measures, product usage information, and many other administrative requirements which provide information for consumers. This subject is a topic discussed at length in Chapter 5.

Much of this law entails precise definition of the goals, the measurement and definition of what is and what is not required under the law. It also specifies the administrative procedure which is used to enforce the law. Since most of these concerns do not change rapidly, the application of the law can be delegated to individuals who need not use much discretion in its enforcement. Building regulations, wiring codes, food preparation, and the like fall into these areas.

Since technology changes over time it is common for such laws to become outdated and need revision. When these laws change the political process discussed in Chapter 7 comes into play. The persons affected by these regulations attempt to have them made favourable to their interests. Again, it is not uncommon for laws to be promulgated with the stated goal of protecting the interests of consumers and the public when, in fact, they are restrictive, monopolistic in nature and to the benefit of the regulated. A good example of this is building codes. The interests of the building industry and labour unions in setting construction standards often exclude substitutable materials or procedures because those with political power benefit from such restrictions. In

the main, however, once in place, these types of law are accepted without question even though their insidious effects continue.

There is growing concern that, because of their number and because of their undesirable side effects and social costs, consumers are often worse off by their implementation. A prime example is in the field of health. The fact that it is costly to test new drugs for harmful and long term side effects and that it may take many years to complete adequate testing may or may not justify the potential benefits of early use of some drugs. On the other hand, less stringent testing requirements could provide benefits earlier but at some risk. Persons who could be helped are precluded from receiving the benefits of the medication. The drugs in question would not have been chosen for testing were they not obvious candidates for solving a medical problem. What constitutes sufficient testing is obviously a question of judgement. Critics of these stringent testing laws are justified in stating that one only measures the costs of being wrong, i.e., some people suffer the side effects, while we do not calculate the benefits to consumers which could accrue from early usage.

The basic question which legislatures seem to be more willing to discuss in recent years is when does safety and health regulation become counter-productive? Many of the administrative laws promulgated to protect safety and health and those which recognize consumer rights to information are obviously beneficial to most members of the public and will be maintained. There are others whose value is going to be questioned in both the consumer and the public interest.

Trade Practices

In the criminal law, trade practices, for example false and misleading advertising, price discrimination (most often questioned in terms of the effect on competitors rather than consumers), bait and switch advertising, pyramid selling, and the like can be prosecuted and the practices stopped. However, it has been found that the need to take court action on these activities is a drastic solution to a problem. If applied under administrative law more rapid changes in behaviour to protect consumers without the ponderous and time-consuming collection of evidence for prosecution under criminal law is circumvented and consumers may be much better off as a result.

Some consumer protection laws in North America include the semi-judicial function of identifying undesirable trade practices and arbitrating a rapid proscribing of the undesirable practice. A case in point is the Trade Practices Act in British Columbia where a Director of Trade Practices can call for Assurance of Voluntary compliance (AVC) about a particular trade practice. If the business agrees to sign the AVC and ceases the practice no legal action is forthcoming. The courts become involved if there is no agreement to an AVC or, if once signed, it is violated. The Director decides whether to seek an AVC or to proceed directly to court for a criminal prosecution under the Act.

(British Columbia Trade Practices Act, op. cit., Sections 15, 16 and 17.)

There is an increasing number of ombudsmen in western governments whose function is to intercede between an individual and the

government. In many instances they may act as a consumer advocate in the sense that they adjudicate and arbitrate between government and the consumer of government services. In this role they are frequently involved in what may be considered undesirable trade practices by government where the individual is relatively powerless to protect his or her rights. The ombudsmen either intervene directly or have other government agencies enforce legislation on behalf of a consumer of government services.

Trade practices and administration affects a relatively minor portion of all transactions in the market place since most sellers conform to generally accepted societal values in their business activities. Trade practice legislation is more powerful than its litigation activity indicates because it provides guidelines and direction to business about what is and what is not acceptable marketplace behaviour.

Regulation

On-going direction and control of many economic and non-economical activities fall under the aegis of regulation. Regulation in the province of Ontario alone encompassed over 292 different provincial regulatory statutes and their resultant regulating bodies. Municipal and federal regulatory activities would add considerably to the total number.

(Barry Bresner and Timoth Leigh-Bell with J. Roberts, S. Pritchard, Michael J. Trebilcock and Leonard Waverman, "Ontario's Agencies, Boards, Commissions, Advisory Bodies and Other Public Institutions: An Inventory (1977)," in Government Regulation: Issues and Alternatives 1978, Ontario Economic Council, 1978, pp. 207-275).

Public utility commissions, communication and energy boards, professional bodies, agricultural production and sales, hospital activities, penal institutions, almost any facet of a consumer's existence is touched in one way or another by a regulatory activity. Many are benign or advantageous to the articulation and representation of the consumer interest. Many have negative and perverse effects. Table 6-1 presents an illustrative listing of federal legislative activities, most of which have direct consumer interest implications.

When the "invisible hand", economic, political or social, does not result in a society we desire the most common response of people, and by inference government, is regulation. The goal of this regulatory activity is a society more in concert with our collective values than if that regulation were not enacted. There is little doubt in our minds that a great deal of the regulatory activity now extant is in the consumer and the public interest. There is also little doubt that a significant amount of regulatory activity is counter to these interests. When governments grant monopolies, some of which are listed above, it is incumbent that active supervision of this delegated power be maintained.

Areas of concern on regulation in the consumer interest are lack of specificity of the goals of regulation and of the evaluation of regulatory success or failure, composition and caputre of regulatory bodies by the regulated, out-dated regulatory legislation where the problem no longer exists and the corollary, needed regulations not yet a reality.

TABLE 6-1
FEDERAL REGULATORY LEGISLATION

Agriculture

Agriculture Products Co-operative Marketing Act
Agricultural Products Marketing Act
Agriculture Stabilization Act
Animal Disease and Protection Act
Canada Agricultural Products Standards Act
Canada Dairy Products Act
Canada Grains Act
Canadian Dairy Commission Act
Canadian Wheat Board Act
Cheese and Cheese Factory Improvement Act
Farm Products Marketing Agencies Act
Feeds Act
Fertilizers Act
Fruit, Vegetables and Honey Act
Grain Futures Act
Hay and Straw Inspection Act
Inspection and Sale Act
Livestock and Livestock Products Act
Livestock Feed Assistance Act
Livestock Shipping Act
Maple Products Industry Act
Milk Test Act
Pest Control Products Act
Plant Quarantine Act
Seeds Act
Western Grain Stabilization Act

Fisheries

Freshwater Fish Marketing Act
Coastal Fisheries Protection Act
Federal Fisheries Act
Fish Inspection Act
Fisheries Prices Support Act
North Pacific Fisheries Convention Act
North Pacific Halibut Fisheries Convention Act
Northwest Atlantic Fisheries Convention Act
Salmon Act

Communications

Broadcasting Act
Radio Act

Energy

Atomic Energy Control Act
Dominion Water Power Act
National Energy Board Act
Oil and Gas Production and Conservation Act
Petroleum Administration Act

Transportation

Aeronautics Act
Atlantic Region Freight Assistance Act
Canada Shipping Act
Department of Transport Act
Government Harbours and Piers Act
Harbour Commission Act
Motor Vehicle Transportation Act
National Harbours Board Act
National Transportation Act
Navigable Waters Protection Act
Pilots Act
Railway Act
Railway Relocation and Crossing Act
St. Lawrence Seaway Authority Act
Transport Act

Financial Institutions and Markets

Bank Act
Canadian and British Insurance Companies Act
Foreign Insurance Companies Act
Loan Companies Act
Pension Benefit Standards Act
Trust Companies Act

Environmental Protection

Arctic Waters Pollution Prevention Act
Canada Water Act
Canada Wildlife Act
Clean Air Act
Environmental Contaminants Act
National Parks Act
Northern Canada Power Commission Act
Northern Inland Water Act
Ocean Dumping Control Act
Territorial Lands Act

Health/Safety/Fairness/Information

Cold Storage Act
Consumer Packaging and Labelling Act
Corporations and Labour Unions Return Act
Department of National Health and Welfare Act
Electricity Inspection Act
Food and Drug Act
Gas Inspection Act
Hazardous Product Act
Meat and Canned Foods Act
Meat Inspection Act
Motor Vehicle Safety Act
Motor Vehicle Tire Safety Act
Narcotic Control Act
National Trade Mark and True Labelling Act
Precious Metals Marking Act
Quarantine Act
Radiation Emitting Devices
Textile Labelling Act
Weights and Measures Act

Occupational Health/Safety/Fairness

Canada Labour Code
Explosives Act
Fair Wages and Hours of Labour Act

Framework Legislation

Anti Inflation Act
Bankruptcy Act
Canada Business Corporation Act
Canada Corporation Act
Combines Investigation Act
Copyright Act
Criminal Code
Foreign Investment Review Act
Industrial Design Act
Patent Act
Statutory Instruments Act
Trade Marks Act

Source: W.T. Stanbury, Possible Areas of Research: Economic Council of Canada Reference on Regulation, Economic Council of Canada, mimeo, July 24, 1978, Appendix I.

Legislators always face the decision and problem of allowing regulators enough freedom to regulate yet providing sufficient specificity and direction in a regulatory statute. So that the spirit and intent of the legislature in enacting the legislation is carried out. The puzzle is not solvable but the job of the regulators can be simplified, a better understanding of the purpose of the legislation for the regulated and those affected by the regulation, and an improvement in the ease of evaluating the effectiveness of regulatory activity would be the result of greater specificity. It is not uncommon for legislators to deliberately enact broad vague legislation which provides great power to the regulators and to the government. This is especially true if there is no organized opposition during its evolution. A case in point is the Farm Products Marketing Agencies Act of 1972. Only at the last minute, through efforts of the Consumers' Association of Canada, was the regulation of national agricultural marketing boards directed to be in the "interests of producers and consumers", (emphasis added). That is the only way in which the consumer interest in that piece of regulation can be challenged. If the bill had been left to pass as it was originally introduced to parliament the regulators could have ignored the consumer interest with impunity. However, evaluation of regulatory success or failure remains a difficult and subjective task even when regulatory goals are well specified (and few are).

There is increasing concern that the regulators are captured by the regulated. The members of regulatory bodies, through their

constant association with the regulated, lose their independent perspective and regulate in the interests of those being regulated, losing sight of the public and the consumer interest. Often, the regulators are recruited from the regulated industry. If the lobbying activities of the regulated are successful the legislation emerges from the drafting process with the requirement that only the regulated may regulate. Self-regulated professional bodies, accountants, lawyers, doctors, and optometrists, to name a few, fall into this category. The agricultural regulation mentioned in the previous paragraph specifies that at least fifty percent of the regulatory body, the National Farm Products Marketing Council, be composed of farmers. It further delegates the task of appointing the balance of the regulators to the Minister of Agriculture with cabinet approval. The result is predictable, a preponderance of the regulators, because of their background and experience, are biased in favour of the regulated. George Stigler, an economist, asserts rather emphatically that regulation is usually the result of efforts by a group to maximize profits - emphatically not consumers.

(George J. Stigler, "The Theory of Economic Regulation," Bell Journal of Economics and Management Science, Spring 1971, pp. 3-21, as cited in E. Scott Maynes, Consumer Protection: The Issues, Department of Consumer Economics and Housing, Cornell University, April 25, 1978, mimeo.)

Such a conclusion is not out of line with our observations.

The process of packing regulatory bodies is not unique to economic activities. All interest groups are constantly attempting to influence the appointments to regulatory bodies with persons who

will best represent the point of view of the interest group. It is in the consumer interest to have persons who will represent their interest on such bodies but, because of some characteristics of large, broad interest groups discussed in the next chapter, consumers have been under-represented.

Treasury Board review of federal regulatory bodies, the requirement of The Bank Act for decennial review, the Ontario Select Committee review of regulation and the call for sunset laws in the United States are all attempts to evaluate the efficacy of and the questioning of the continuation of regulatory activity. At the time of writing the Economic Council of Canada and the Institute for Research on Public Policy are both investigating the extent and the effects of regulation in Canada.

I would be naive to assume that regulation is going to be of less importance in complex modern day societies. With increasingly large and powerful interest groups and mass marketing of goods, the interests of individual consumers can be easily overlooked. The attempt to legislate competition and economic activity - the Combines Investigation Act in Canada, the various anti-trust laws in the United States, and similar competitive law in the U.K. and now in the Common Market - have as much of their basic philosophy the protection of consumers and promulgation of economic efficiency. In the final analysis this legislation is an attempt at an equitable distribution of resources to individuals. Many regulatory activities may be beneficial to the consumer but too often, because of

the difficulties representing the interests of large latent interest groups discussed in detail in the next chapter, regulatory activity serves the interests of narrow special interest groups or is counter productive. That is not to say that we should not regulate nor that the consumer interest would be better served without regulation. What it does mean is that the consumer interest is not well represented and that the costs of a particular area of regulation do not, as presently administered, justify the benefits derived from that regulation. They may benefit the regulated, or they may make the politicians' lives easier, or they may reduce social hardship for a small group. They may not be in the consumer interest.

Regulation is receiving more and more attention by government, business and the academic community since failures of the regulatory process are often spectacular. It is an area of the law and the consumer interest where the need for the specification of the consumer interest is paramount and enlightened and unbiased application of legislation is critical to representing that interest. How to do an effective job of regulation is not clear. Much more policy development and knowledge of how to regulate effectively in the consumer and public interest is needed if this dimension of the law and the consumer interest is to operate satisfactorily in the future.

Consumer Use of the Law

If the law is to be effective in defining the rights of consumers, individuals and groups of individuals in their roles as

consumers must have access to the courts and effective means of exploiting the law to this end. Access to the courts, in legal parlance, the right to standing or locus standi, is discussed from the consumer viewpoint first. A discussion of class actions, their usefulness and their problems as a legal tool for consumer interest definition concludes this section.

The Right of Standing

A basic tenet developed over the years in the common law has been that anyone who can show significant interference or infringement of a private right by an individual or a statute may approach the Court. In fact, even this rule is not inviolate since in Canada oft times one must receive right of the Crown, and in the United States of the government, to sue the government. But in general, one needs to show a rather direct infringement of a private right before one is able to bring a case before the Court. A contract broken; and faulty manufacture of a product; infringement of a civil liberty; any thing which directly effects one's right provides access to the legal system to redress or at least an evaluation and adjudication by the court of a perceived diminution of one's interests.

Standing becomes more tenuous as one's rights become more distant. One may sue to prevent the construction of a veterinary kennel next door whether one is an individual or a business firm because the directness of the infringement is easy to prove. If the clinic is three doors away the right of standing is less certain. If it is three blocks away it is doubtful that one could

obtain standing because of the difficulty of convincing the court of the directness of such an infringement.

The problem of standing really becomes complicated in the case where the interests of the public as a whole are perceived to be infringed. If an individual can show special damages over and above the general damage suffered by the general public then standing is possible but who sues for the protection of the public? Of concern here is the fact that many issues can be kept from public and judicial scrutiny if the court judges that damage is distant or an infringement of a right by a statute or its application can occur because an individual or group of individuals cannot obtain standing. The Attorney General may sue on behalf of the public but it is often difficult to prod him into action, especially if the action challenges government policy. In the case of large latent interest groups such as consumers, because so many of their rights are small and relatively distinct the rights are open to continuous erosion.

An example is a recent case in British Columbia where the Courts found that the British Columbia Broiler Marketing Board had exceeded its legal rights by restricting the importation of chickens from the United States.

(Kelly, Douglas Company Ltd. v. B.C. Broiler Marketing Board, op. cit.)

The Court ruled that under its enabling legislation the Board only had the right to control chicken produced in the province. In 1970 the Board had ordered sellers of chickens imported from other provinces of Canada and the United States to obtain permission from

the Board to import chicken and the Board prescribed the amount to be imported and the price at which it could be sold. When this rule was not followed the Board seized and disposed of the chicken. The successful suit was brought by a supermarket chain who convinced the Court that their rights in commerce were abridged and thereby obtained standing to sue.

Several years before the supermarket filed the private suit one of the authors investigated the possibility of challenging the Broiler Board's actions unconstitutional and as infringing on a private right. He was advised by at least three lawyers knowledgeable in the area that the Courts would not grant standing as the infringement was distant and small. The aggregate injury to consumers in British Columbia amounted to several millions of dollars annually. It appears that the Board is not liable for the ten million plus dollars the practice has cost consumers during the time it engaged in the unlawful behaviour nor does it appear that there is standing for consumers to sue for restitution arising from the Board's illegal actions.

Evolution of decisions on consumer rights of standing in the Courts in recent years have broadened that right considerably. In turn, this broadening of the rights of standing has broadened the perception and the reality of interests and rights for large latent interest groups. As is usual in the evolution of the common law, each individual case is decided by the Court and locus standi is no exception.

The progression of cases on the right of standing commences with Boyce v. Paddington Borough Council in 1903 and ends with

MacNeil v. Nova Scotia Board of Censors in 1974. These cases are ones which deal with an individual's right to sue for infringement of his own rights and to sue in the public interest. Of significance is the fact that in more recent decisions the infringement of rights need be less direct than previously to obtain standing.

Johnson feels extension of standing for an individual to sue the government for over-stepping its constitutional powers was recently expanded in the case of Thorson v. Attorney-General of Canada in 1973.

(John M. Johnson, "Locus Standi in Constitutional Case after Thorson," Public Law, 1975, pp. 137-160.)

Thorson, brought suit against the Attorney General of Canada "on his own behalf as a taxpayer of Canada, and also on behalf of other taxpayers of Canada" that the Act was invalid and that public funds should not be used to put the provisions of the Official Languages Act into effect.

(Ibid., p. 138).

The Ontario Supreme Court (reported at (1972) 1 O.R. 86) did not allow standing. Neither did the Ontario Court of Appeal

(Thorson v. Att-Gen. of Canada et al. (no. 2) 1972, 2 O.R. 340)

but the Supreme Court of Canada declared that Thorson had standing and allowed the trial to proceed on its merits in the Ontario Supreme Court. (43 D.L.R. (3d) 1974.) Johnson concludes that:

The Thorson decision has also, by implication, accorded some slight recognition to what I call the "public citizen", a private person who without private motive is sufficiently interested in the public weal to devote time, effort and money in an attempt to uphold the public interest as he perceives it. He still is much less welcome in Court than the private citizen who with private benefit in mind calls into question some public

act, but it is progress for the public citizen just to be legitimately in the courtroom. (Johnson, op. cit. p. 160)

Since that time an individual named MacNeil brought suit against the Nova Scotia Board of Censors for an infringement of his and other public rights by the Boards' prohibition of the showing of certain motion pictures. MacNeil's right to standing was challenged but was upheld as the issue was the same as in the Thorson case.

Standing and Regulatory Agencies

Rights of standing for consumers in front of federal and provincial regulatory bodies is largely a non-issue. Standing is often provided by statute or if not by recognition of the consumer interest and an inherent right to be heard. However, the problem is to convince the regulatory body to grant standing in areas where they have discretionary power, to provide for the rights of consumers to sufficient information and time to adequately prepare and present their case and, most importantly, to allow discussion of the pertinent points rather than tangential issues. Examples of each situations are presented below.

Inter Provincial Pipeline was appearing before the National Energy Board (N.E.B.), the regulatory agency, to present their case for the rates for transporting petroleum products from Alberta to Eastern Canada. Inter-Provincial acts as the wholesaler of these products to firms such as Texaco and Imperial Oil. The Consumers' Association of Canada desired to intervene in the hearings and Inter Provincial made the case that C.A.C.'s interest was too distant, that the C.A.C. should approach the oil companies

directly and that they should not have standing in the I.P.P. hearings. The N.E.B. has discretionary power in these matters and in this case ruled that C.A.C. had an interest and granted standings.

(National Energy Board Hearings, Dome Petroleum Hearings, September 21, 1976, pp. 10-22.)

In hearings in front of the Canadian Radio and Television Commission the Commission ordered the London Cable television company, appearing before them on a rate increase proposed, to provide the intervenors for consumers, the C.A.C., with their financial statements and records and provided time for an analysis of those records as that an informed case could be made by the consumers.

(Canadian Radio-Television Commission and London Cable TV Ltd. Dominion Law Report 1976 67 (3d) pp. 267-271.)

Contrast this with the case of the National Farm Products Marketing Board (N.F.P.M.C.) refusing to order the Canadian Egg Marketing Agency to release the data necessary to evaluate the formula used to set national egg prices. (Correspondence between C.A.C. and the chairman of the N.F.P.M.C. and a meeting on December 2, 1977, with members of the N.F.P.M.C. and the general counsel of C.A.C. and J.D. Forbes, participating on behalf of C.A.A.). An interesting sidelight to this situation is that the regulatory body, the N.F.P.M.C. has not seen the data and has not analyzed it. It appears they are regulating on faith rather than fact and understanding of the regulatory tool.

The reason the example given above all relate to the experiences of the C.A.C. is that it is the only national group directly

representing the consumer. The Regulated Industries Program - funded by Consumer and Corporate Affairs Canada - is the only national group with any resources to to this task. Another recently federally funded group, the Public Interest Advocacy Centre, has represented similar, broadly based interest. At the provincial level a few groups, most were narrowly focused about problems such as automobiles and the like but also the provincial C.A.C. groups, are active sporadically but do not normally have the resources and legal aid to test the law on issues such as standing. An interesting analysis and discussion of some of these problems is contained in

(Edward Belobab, Jack Berkow, Marc Denhex, and Ellen Macdonald, On the Question of Consumer Advocacy = A Working Paper, Canadian Consumer Council, Ottawa, August, 1972, pp. 70-139.)

Activities in the United States, in this case by the Sierra Club, resulted in the conclusion of a "Remarkable standard: Consumers of regulated products and services have standing to protect the public interest in the proper administration of a regulatory system enacted for their benefit." (Ibid., p. 134)

In Canada rights of standing by consumer advocacy groups in front of most regulatory bodies - except agricultural marketing boards and self-regulating professional groups - have not been a problem. Most regulatory agencies have been willing to consider consumer group representations. The problem has been and continues to be the overwhelming imbalance in the resources available to special interest groups to prepare and present their case and the corresponding paucity of resources to counterbalance with the

consumer case. A recent issue of Consumer Reports estimated that in the United States all consumer groups spent about \$3 million, in their representation and lobbying activities, 0.3 percent of the \$1 billion spent by business lobbies.

(Consumer Reports, September 1978, pp. 526-527.)

The expenditure pattern in Canada is of the same order of magnitude. Some of these matters are discussed in the next Chapter in more detail.

Finally, the right to standing for consumers is not automatic. The interests of consumers in the right to standing is a prerequisite to using the law to define those rights and it is the function of consumer advocacy groups to ensure that consumers have well defined rights to present their case. A case in point is the revision of the Combines Investigation Act which regulates business practices. At Section 31.78 of the draft bill only persons who were, "likely to be substantially affected," by actions of the Competition Board - who the regulatory mechanism proposed in the Act - were to be granted standing to appear before the Board. The C.A.C. stated that this wording was restrictive and not in the interests of individual Canadians and went on to provide examples of similar Canadian legislation which is not restrictive.

(Consumers' Association of Canada, Submission to the Standing Committee on Finance, Trade and Economic Affairs, House of Commons, Ottawa, June 1977, Appendix A.)

The public policy conclusions we draw from our discussion of the consumer interest in standing is that in almost every case the sheer imbalance of resources on the consumer side to present their case is such that access to the courts and regulatory processes

should not be restricted by matters of standing. We will agree in other places in the book that resources should be provided to redress some of this imbalance. Another way which is being used to redress this imbalance in the Courts are class actions which is the next topic for discussion.

Class Actions

A class action is a legal device which permits individuals to join together to sue for a common grievance. One individual consumer suing British Columbia Hydro or General Motors is a pretty uneven contest. Thirty thousand individuals in the same action greatly reduces the imbalances which usually exists between consumers and business in these types of legal proceedings. The small can fight the large. In addition to the individual litigation for damages, class actions are a vehicle for enforcing public policy. They are useful in situations where one or a combination of the following problems is encountered and where the complaint is common to many individuals: where the proofs of fact and damage are difficult, or expensive or both; where the sums at stake are too small to justify an individual action; situations where a conviction proves a point or stops a practice without significant damages being at stake at all; and where the risks to an individual of losing a private suit, because the awarding of costs to the defendant, would be financially devastating.

Examples of these types of situations are useful in understanding class actions. Proofs of fact and damages being difficult, expensive or both can be represented by the need of

laboratory tests and expect witnesses to prove to the court that the paint and its application resulted in premature body rust in automobiles. Most often any damages suffered by an individual owner could not afford the cost of this type of proof nor the determination of damage. A class action in British Columbia stopped the retention of consumer deposits for guarantee of hydro services without payment of interest on those deposits.

(Chastain v. B.C. Hydro and Power Authority, Dominion Law Reports 1972 32 (3d) pp. 443-459.)

And how many individuals could sue a large corporation, lose the suit, and afford to pay a \$100,000 legal fees incurred by the defendant and themselves.

As well, these are deterrent effects of class actions which make them potential vehicles to use the courts to define and protect consumer interests and to redress in some degree the imbalance between consumers and the usual defendant in a class action, a large financially strong corporation. In the past, individual suits, even if won in court, would fail to stop a generally objectionable practice because the liability was only binding between the plaintiff and the defendant. Through aggregating numerous separate claims of like nature, class action secures wider-spread cooperation, compels businessmen to disgorge profits from improper practices and acts as a deterrent to improper activities. Although class actions are almost always more complicated and more costly than individual litigation, the deterrent effect of widespread publicity which usually accompanies class actions, as compared to the relatively unnoticed individual suits, makes this

device, where applicable, especially sueful in consumer law.

(Neil J. Williams, "Consumer Class Actions in Canada - Some Proposals for Reform", Osgood Hall Law Journal, Vol. 13, No. 1 (June 1975), pp. 1-88, provides a comprehensive and insightful discussion of consumer class actions in Canada. He also provides a draft of legislation for class action which takes care of many of the problems outlined in this section, pp. 1-88.)

Problems with Class Actions

Class actions are not without their problems. However, there are some interesting legal developments which should make class action a more effective tool to save courts and plaintiffs time and money and to save the courts the embarrassment of contradictory rulings in separate actions on identical issues.

The courts in Canada have had difficulty allowing class actions when the damages to individuals are not identical. For example, in the case of the Firenza automobile, a group tried to bring a class action suit against General Motors who had advertised the car to be "durable" and "tough" and "reliable". They brought the suit asking one thousand dollars damages for each of the members of the class in the action. The court refused to hear the case under a class action since there were many consumers who had not had problems with their particular automobile, others had had damages less than \$1,000 while others suffered larger damages.

(See Robert S. Reid, Naken et al. v. General Motors of Canada, Ltd., et al. - The Firenza Case - Stumbling-block to Canadian Consumer Class Actions, Faculty of Law, University of British Columbia, Vancouver, mimeo, no date, for a good discussion of this problem.)

Immunity from being assessed costs if an action fails is still not established in the Canadian courts. The effect of a potentially

large award of costs for a suit which was not successful, especially in the case where proofs are difficult and expensive to develop, is a deterrent to using the law to redress consumer problems. Williams proposes that if the courts are required early in a claim to rule on whether an action is brought in good faith and that the claim appears to have merit two positive benefits can accrue. Defendants will be protected from frivolous suits with little merit. Those bringing a suit which appears to have merit would be granted immunity from the awarding of costs should the suit fail. Even were such a development to come about plaintiffs who eventually lose such cases will still be required to pay the costs of their own counsel, usually not an insignificant amount. (Williams, op. cit., p. 52.)

In cases where a large number of plaintiffs cannot be identified, such as is often the case, the Canadian courts have refused to award damages to other than identifiable individuals. Many times only a small fraction of real damages is ever paid by the party found liable in a class action. In the United States, through a device called "fluid class recovery", when the potential recipients of damages have not been identified the courts have for "prophylactic purposes", for wrongs done to the masses and to discourage "preying on the public", directed that the damages be paid out to the general class under consideration. (Ibid., p. 56.) As an example, in Daar v. Yellow Cab Co., the defendant, the Yellow Cab Co., was directed to reduce future taxi fares until the past overcharges, as determined under the class action, were repaid to the riding public. This type of recovery has been vociferously

opposed by some members of the legal profession as giving damages to a person who had not been damaged.

Two observations on this matter are interesting. The first is that, "The windfall that does occur should be viewed as an unavoidable by-product of the basic relief; it should no more make such relief improper than does the fact that the third parties may benefit from injunctions make that relief improper. More generally, so long as defendants' rights are not abridged, it is unclear what policy is served by striking down a remedy which may be the only effective way to vindicate the rights of plaintiff class members, simply because it also benefits third parties".

"Managing the Large Class Action: Eisen v. Carlisle and Jacquelin (1974), Harvard Law Review, Vol. 87 (1974), p. 453, as cited in Ibid., p. 59.)

And the second comment, "A successful class action for consumers can bring compensation to the people injured by business malpractice. To compel the defendant to part with improperly gained fruits of his endeavors and to deter a repetition of the wrongdoing are two no less important class action functions". (Ibid., p. 59.) The effectiveness of class actions by extracting total damages from the firm found liable would be greatly enhanced were the Canadian courts to use this and other devices to prevent unjust enrichment.

Summary and Conclusions on Laws Affecting Consumers

Laws affecting consumers cover a wide range of behaviour from dictating standards of cleanliness of hospitals where they are berthed to legislation regulating funerals. The pervasiveness of laws cannot help but have a significant effect on the operation of

business and governments. The evolution of the number and pervasiveness of these laws in the last several decades may be described by some as dramatic. We have little doubt that they have helped tilt the balance of justice more in favour of the individual in their consuming role. The shift to "buyer beware" from "seller beware", greater assurance of implied warranties of product quality and service and the express guarantees imposed by some laws, greater access to the Courts and more useful legal tools to press their case is indicative of this shift. In spite of these advances many persons believe more is needed if the consumer interest is to be adequately represented by the law.

The problem is political; a problem when the chips are down or who has the economic power to use the Courts to influence legislators and to control the market place. The balance of the chapter addresses this problem in theory and in practice.

Discussion of Law and The Consumer Interest

In the theory of law, interests have generally been considered as sources of conflict requiring readjustment through social agencies. From this point of view judicial decisions and the law behind them constitute a specially sanctioned process for the peaceful settlement of conflicts of interest and enforcement of morals of public behaviour. Voluntary agencies and modes of adjustment are the most common way of settling disputes between individuals and groups but are inadequate in doing things laws can do. Voluntary adjustment means work only when the parties making the adjustment agree to abide by the decision. We agree to move our auto-

mobile off your lawn; Dr. X agrees to pay Patient Y for removing the wrong organ in an operation; or Company A agrees not to sell to a group of customers near Company B's plant. In the first two instances only the two parties involved need to disagree to have a conflict situation. In the latter case Company A and B may be perfectly happy with the agreement to allocate the market but society believes such agreements undesirable. In the first two cases voluntary means of adjustment are not adequate if conflict develops. In the third case the agreement disregards the interests of members of society other than those who are directly involved in the agreement. Individuals negatively affected by the agreement lack authority to force the two businessmen to change their agreement and hence a law is instituted to direct the courts in the matter.

John Dickinson has said: "No fact is more important for an understanding of social processes or of the development of agencies of social control than that a conscious adjustment of interests between numerous parties cannot shape itself initially through the spontaneous action of all the interested parties, but most ordinarily result from the special efforts of some external agency ---charged with the task of surveying the situation as a whole and devising a plan."

(John Dickinson, "Social Order and Political Authority," American Political Science Review, Vol. XXIII (1929), pp. 293-328.)

Such an agency not only is authoritative but also can adapt its determinations to the requirements of each changing situation.

Some writers on the theory of law have given a greater reality and concreteness to the old conception of legal rights by translating them into legally protected interests. Rights, in other words, become a particular species of social interests, selected for recognition and confirmation by legislation and judicial decision. This idea has in turn led to the concept of the state as essentially an organization for the determination and adjustment of the interests operative within a society.

Drabbe, for example, perceives the state as a regulatory power over interests, with the responsibility for continually adjusting and moderating these interests for the sake of practical harmony. The State, in his view, should be regarded not as the "possessor of public interests" but as a complex of agencies which administer a series of public services which generally bring into a workable system the various conflicting interests of the community. This process Krabbe speaks of as "an evaluation of interests", (see Hugo Krabbe, De moderne staatsidee (The Hague 1915) translated by G.H. Sabine and W.J. Shepard (New York: 1922)), although in interpreting this statement one should bear in mind Korkunov's statement that "law is the determination, morality the evaluation of interests".

The law has been used over history to deal with problems of unequal rights by the application of wisdom to secure "justice". That concepts of "justice", "right and wrong", and similar culturally based values change over time should not be surprising nor should the fact that the law changes to reflect changing

societal values. However, law and government can only impose onto the body politic those social restrictions which have sufficient acceptance by a large proportion of that body to be enforceable. The unenforcability of prohibition in the U.S. in the 1930's and the lack of legislation outlawing smoking are cases in point. The common law most often lags public attitudes and this has been our evaluation of it in the area of the consumer and the consumer interest. Many people we spoke to and many of the things we observed and read led us to the conclusion that a significant number of people believe the system of courts as we know them are not adequate for many consumer problems. Small claims courts were established to allow parties to settle disputes involving small amounts of money without the panoply of the Courts. It is not much of an overstatement to say that small claims courts is the debt collection agency for business since their main use is ruling or judgements for business debt collections, usually without the person owing the debt present at the courts.

The point to be made is that for many consumer problems some means to facilitate the mediation and arbitration of conflict must be devised. The need is not just the protection of consumers from practices of shady business operations but also to have the law keep pace with changing business practices and technology. The process of designing a system responsive to the needs of consumers will be evolutionary. Problems created by electronic payment schemes, depersonalized computer systems, advanced technology products whose suitability for sale can only be evaluated by experts, and similar unforeseen factors are not well suited to being solved

without resorting to legislation.

Man's ability to develop schemes to regulate activity has not always been successful. Regulatory activity in all spheres of human endeavor is coming under increased scrutiny. In spite of this we look toward increased legislation to provide a better balance of consumer power to the power of large business and government enterprises made less responsive to consumer needs than they have in the past. The main causes of this lack of responsiveness is the result of the sheer size of enterprises and governments, the dehumanizing results of new technologies to transmit and process information, an increase in buying power and its consequent increase in consumption decisions by individuals, and the distance, physical and psychological, which these changes impose on the buying process. Face to face interaction in buying and selling is not what it was in more simple societies.

The ability to devise systems responsive to the needs of consumers is not unique. Governments are trying to remain close to the electorate and feel the same as many businesses to consumers when faced with an irate electorate. (These general concerns are articulated by many legislators and the legislated in

Stanbury, W.T., W.A. Neilson, and J.C., MacPherson,
The Legislative Process in Canada: The Need for Reform,
Butterworth's for the Institute for Research on Public
Policy, Toronto, 1978.

The ultimate answer to the design of adequately responsive systems is obviously not available. The development of better systems will take time, trial and error to evolve. Observing and participating in that development will be a fascinating and interesting exercise.

The realities of the process of the development of legislation for consumer interest definition and expansion of consumer rights in the Canadian socio-political environment, part of the process of the development of law and legal systems concludes the chapter.

Consumer Legislation Politics

Laws promulgated through the legislative process are the result of interest group pressure. While the evolution of common law is subject to the general attitudes and values widely held in the community and develops slowly over time, it is not as responsive to interest group pressures as are laws which are made in legislatures. Nadel has written an interesting book, The Politics of Consumer Interest describing the role of politics in consumer interest representation and legislative processes in the United States. While the consumer interest is probably no more subjected to the political process than other types of special interests, one must understand the process if one is to understand how laws define that interest.

(Mark V. Nadel, The Politics of Consumer Interest, The Bobbs-Merrill Company, Inc., Indianapolis, 1971.)

Examples of the ways in which the legislative process affects consumer interests are numerous. The recent energy crisis evidences the effect of political lobbying by the petroleum industry. Price and production incentives and constraints have had a wide impact on the consumer interest. The impact of this type of political pressure can be very great. Agricultural interests over the years have used the political process to influence government food policies which often are against the

interest of and at the expense of individual consumers. Freedom of information, or rather the lack of it, is an important political issue. In the North American context the amount of information available in the United States is greater than that available in Canada where the parliamentary system manipulates information to a much greater degree than its counterpart south of the border. Many interest groups are working to free up information which will help evaluate government activities and to direct future lobbying activities. These are but a small sample of ways in which consumer interest laws are affected by the political process. For our purposes in this chapter we would like to present several recent examples of political activity and the results of that activity or consumer legislation.

A Consumer Legislation Advance

A timely confluence of favourable conditions and interests leads to the drafting of legislation to define and expand the consumer interest. Pressure group activity, public acceptance, government commitment and knowledgeable people to draft workable legislation, legislation based on past experience of what will and what will not work, salted with creative innovations to accomplish goals on behalf of consumers can result in quantum increases in consumer interest definition and representation.

An example of this phenomenon is the introduction of the Trade Practices Act in British Columbia in 1975. The government passed a far reaching piece of legislation which had some new legal innovations whereby a Director of Trade Practices has the choice of

requesting an assurance of voluntary compliance to stop what he considers an illegal trade practice or to take the matter to court for legal sanctions and penalties. Investigatory powers, resources for administration and other innovations in the field only came about because a Deputy Minister, with broad training and experience in how the legal system had failed in protecting consumers in the market place, supervised the drafting of legislation which the government had committed itself to enacting. Pressure group activities by consumer groups on the government in particular and the public in general created a climate conducive, even eager for this type of legislation.

(See Jacobs, Ziegel, "The New Trade Practices Legislation," Canadian Consumer, February 1975, pp. 18-20, for a discussion of similar legislation in Ontario and Alberta.)

The point to be made is that not only is the process of interest representation important in defining consumer interests but a fortunate and timely convergence of people and circumstances aids the political process of change and evolution of interests. This occurrence is not limited to consumers but it is easily illustrated in this particular area of social control.

Several Legislative Setbacks

One only has to evaluate the fates of Stage I of the Combines Investigation Act in Canada, Stage II of the same act and of the Consumer Protection Agency in the United States to illustrate the thin line between advances and setbacks from consumer advocacy positions.

Stage I of the Combines Investigation Act was a draft act which

strengthened the power of the Federal government to regulate trade practices and deceptive acts. It was not strongly opposed by any interest groups and almost all of its provisions against false and misleading advertising, deceptive pricing practices, pyramid selling, and bait and switch selling and other questionable activities passed in the Parliament. Where powerful interests in the business community disagreed with its provisions, mainly in outlawing resale price maintenance, changes in the draft act to aid in more effectively enforcing the act were from the final act through political action on Parliament by special interest groups; in this case retail and other business interests.

Stage II of the Combines Investigation Act has apparently been emasculated by the lobby for agricultural and business interest.

(See W.T. Stanbury and Stephen Cook, "Competition Policy: The Retreat Begins," Canadian Consumer, February 1978, pp. 36-38.)

Of the 147 briefs presented to committees, of Parliament 121 or 82% of those presented were by business or agricultural organizations. Only two were from consumer organizations. While much of what is contained in the bill has to do with relationships between competitors rather than with consumers, the outcome of the proposed legislation could result in a more equitable redistribution of power from the larger business firms to the smaller business firms and consumers. It is no wonder that those who have power and wish to retain that power have been so active in the legislative process.

The 40 briefs presented by farm organizations would not have been presented were not the ability of agricultural interest to set production levels and prices through marketing boards threatened by

Table 6-2
Briefs Presented on Bill C-42 to Both
Houses of the Canadian Parliament

Source of Brief	Number of Briefs	Percentage of Briefs
Individual firms, businesses and trade organizations	81	55
Farm organizations, marketing boards, provincial governments or departments	40	27
Academics	8	5
Individuals	8	5
Lawyers	5	3
Consumer Organizations	2	1
Other (including 2 labour)	3	2
Total	147	98*

* Do not total 100% due to rounding

SOURCE: W.T. Stanbury and Steven Cook, "Competition Policy: The Retreat Begins," The Canadian Consumer, February 1978, p. 36.

the draft bill. A Very strong and effective political campaign on behalf of the farm lobbies in Canada brought forth over forty briefs. Had the price setting activities of the marketing boards not been threatened even one brief from farm organizations would have been remarkable.

Another example of the political process, interest group activity and the consumer interest is the defeat by the U.S. Congress of an act to establish an office of consumer protection. The main function of the proposed agency was to represent the interests of consumers in the departments of the U.S. government and to be an internalized consumer advocate which could more effectively redress some of the representational imbalances characteristic of that interest. Some persons believe the defeat of the bill was a generalized reaction against excessive regulation rather than an action against consumers.

(See Ellen Roseman, "Backlash Against Consumer Activism Growing," Toronto Globe & Mail, 2 March 1978.)

Other attribute the defeat of the Act a result of the growing success of consumer activism and a massive campaign by business to defeat the bill which would have provided increased consumer power.

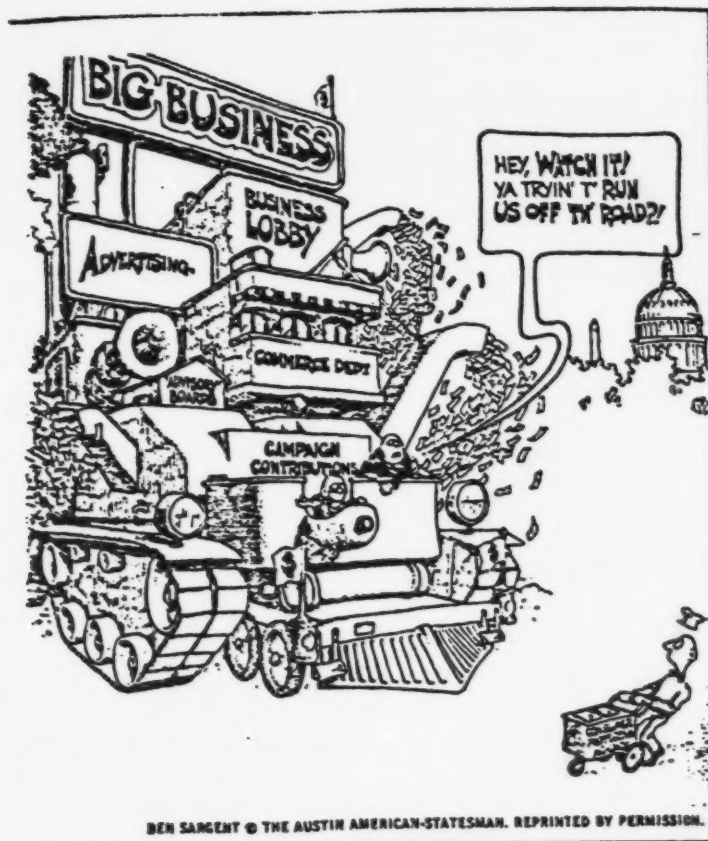
(Consumer Reports, "Business Lobbying: Threat to the Consumer Interest," September 1978, pp. 526-531.)

They cite activities supported by a group of business interests conducting a publicity blitz resulting in over 800 editorials and articles approved to the Act. (Ibid., p. 531)

There should be no doubt that legislation of the consumer interest is a political matter. Law is majestic only after its

promulgation. The pushing and shoving and shouting and dealing which is the political process that spawns the law is no more majestic than common barrel politics in its gestation and birth.

Figure 1



Summary and Conslusions on Law and the Consumer Interest

Law is the most formal way of society's many systems of prescribing behavior. With the law we define the process of adjudicating conflict, prescribe a wide range of behavior and outline the range of sanctions for violating the rules. The law is composed of judicial decisions of the common-law, the statutes which are passed by legislatures and the judicial interpretation of those statutes by the court. It reflects the mores, attitudes and values held in the community about behaviour and is designed to change over time, balancing the interests of parties and determining what is "fair" in the process. When the common-law does not change rapidly enough, or where society desires to provide direction to itself statutes are enacted by governments as a guide to the courts.

In directing behavior, in adjudicating between interests, in their judging of "fairness," laws often restrict the rights of individuals and groups, frequently with the justification of the utilitarian philosophy that such restriction of freedom results in the greatest good to the greatest number. There is a constant tendency towards the erosion of individual rights. When the interests of individuals and groups are diffuse, when they are only minimally effected by any specific law or regulation, this erosion is even more insidious and results, over time, in a significant loss of individual and group rights for large interest groups such as consumers. There is a redistribution of rights to narrow, special interest groups from the larger, less organized, less politically powerful consumer groups.

Law has been one of the major ways in which the definition, expansion and representation of consumer interests has been possible. It is a major tool on the consumer advocate's kit to enforce existing laws which protect consumers from individual injustices and from collective injustice and erosion of their interests.

The interests of consumers as defined by the major laws affecting them are included in the law of contract; the sales of goods acts resulting in a shift to "seller beware" from the 19th century "buyer beware" mentality; regulation of safety, health and information in the marketplace; regulation of trade practices in the consumer interest; the broad scope of regulatory activity in Canada, some of which is decidedly not in the consumer interest; and consumer use of the law through access to the courts and the collective right to sue which class actions may offer if some legal hurdles can be surmounted in the future.

Finally, the evolution of laws affecting the consumer interest is a political process subject to the balancing of the interests of consumers with those of more special interests. Society defines, redefines, expands and contracts the consumer interest through the political process which is the same rough and tumble, but fascinating, process affecting all interests and interest groups in society. The political process and the definition of the dimensions of the consumer interests by that process is the subject of the next chapter.

Chapter VI

The Behavioural Sciences and the Consumer Interest

A prime reason for individuals joining together in groups is to have their individual motivations and aspirations met within a societal system. The functions of individuals, groups and the state have fascinated behavioural sciences from the dawn of recorded history. Plat's discourses on the state and the human condition have continued unabated for several thousand years.

In complex modern societies individuals acting by themselves are relatively impotent in political processes. The ability of individuals to create change is so extraordinarily difficult that newspaper stories are written about individuals who, against all odds, have changed laws and triumphed over the system. The function of this chapter is to evaluate how the system is changed to help individuals better represent their interests as consumers. It is a description and analysis of the consumer interest in the political process.

In this chapter we very briefly state some assumptions about individual behaviour, provide a definition of the public interest, and specify how the public interest is different from the consumer interest. The stage is then set for a discussion of interest group representation in political processes.

The difficulties of representing the consumer interest against special interest groups in modern, democratic societies is discussed in detail. The unique difficulties encountered in representing the consumer interest in Canada conclude the chapter.

Individual Behaviour

Before proceeding further we want to first establish our assumptions about the behaviour of individuals and especially those portions of behaviour which are most important to them in their role as a consumer and as consumers working in interest groups.

We accept that individuals are a conglomeration of values, attitudes and aspirations. Individuals hold attitudes on many subjects, some loosely held, others are strongly held. The attitude clusters are complex and often are inconsistent with other attitudes. The aspirations of individuals and their drive to achieve these aspirations provide the motivating force behind their behaviour. We assume that individuals want more of those things they aspire to, rather than less, if the perceived cost of obtaining more is not excessive.

If one is to predict behaviour one must have a model of behaviour about how individuals match aspirations with decisions. This process of achieving aspirations through making choices involves the concept of rationality which

often caused confusion which, for our purposes need not occur.

Downs defines an economically rational person as one, "who behaves within a range of alternatives; (1) he can always make a decision when confronted with a range of alternatives; (2) he ranks all the alternatives facing him in order of his preference in such a way that each is either preferred to, indifferent to, or inferior to each other; (3) his preference ranking is transitive; (4) he always chooses from among the possible alternatives which ranks highest in his preference ordering, and (5) he always makes the same decision each time he is confronted with the same alternatives."*

*(Anthony Downs, An Economic Theory of Democracy, Harper & Row, Inc., New York, 1957, p. 6).

We believe that individuals have the capacity of acting rationally if they are prepared to spend the time required. While they may not satisfy all of the assumptions of Down's perfectly rational man, we are willing to make the assumption that in general people select better alternatives rather than poorer alternatives when they recognize a choice situation exists. "The behaviour of (consumers) may be ignorant but that is not equivalent to its being irrational."*

*(Ibid., p. x).

All rational decision makers in our discussions in this chapter, including political parties, interest groups, and governments in addition to individuals,

exhibit the same qualities of rationality, that is, they will select better alternatives over worse alternatives.

We assume individuals, and individuals acting in groups, weigh the facts as they perceive them, evaluate the most likely outcomes of the various choices, and make a decision which best serves their individual or collective aspirations and self-interest at the time the decision is made. This does not mean all decisions are good. It only means at the time they were made they appeared the best given the weighting of the factors entering the decision. It also does not preclude conscious or unconscious distortion of the facts by the individuals involved or by individuals or groups external to the decision. A short expansion of these thoughts illustrates some of the concerns which arise in consumer decision making.

We treat consumerism as an expression of a rational desire to improve the purchasing environment. While consumers are oftentimes biased in their decision by distortions of fact, by lack of education, by lack of timely and properly structured information, they react rationally according to their perception of reality. An example of this distortion is advertising which gives consumer a false understanding of a product's quality and influence individuals to make purchase decisions on biased information. This is a situation which individuals

usually cannot correct by themselves. "Truth in advertising" laws instituted by pressure from individuals acting as consumers and by firms who use more "truthful" advertising information - and wish their competitors would do the same - are the outgrowth of the desire for an environment in which a consumer has the opportunity to be rational. Individuals recognize that their expertise in any particular area of consumption may make it difficult for them to function rationally and in their own best interests.

Society makes many decisions which determine the amount and types of inputs to be used by that society to sustain itself, the way the resources will be combined in the production process and how the output of the society is to be distributed to the groups comprising it. The major economics and political decision in society are most often made by persons acting as groups rather than as individuals. The individual is not outdated as a decision-maker nor as a motivating and collectivizing force. In fact Ralph Nader is perhaps the single most important phenomenon in North American consumerism. But even he had to develop groups of individuals to help secure sources of funds, capabilities for information acquisition, analysis and dissemination and to provide political power to pursue his advocacy activities. Still in all, the group is the basic societal entity in the political process. The one person crusader is the

exception and stands out because of it. Individuals are the motivating and leading force behind groups, but interests groups and their representation activities are the political entity most appropriate for our purposes.

Public and Consumer Interest

A discussion of the public and the consumer interest identifies the characteristics and aspects of group behaviour which we need to look at to understand the consumer interest representation in the political process, as distinguished from the representation of other interest groups. Since the consumer interest is so often confused with the public interest (as suggested in the common expression "we're all consumers"), it is also useful to separate the two concepts of the public and the consumer interest.

The Public Interest

The concept of the public interest has fascinated and perplexed man for many years. In 400 B.C., Plato, in The Republic and in some of his other works, implicitly, and most tantalizingly close to explicitly, uses the public interest concept as the definition of the objectives of administrators of the State. Books, articles and public statements continue to attempt to define this illusive concept of the public interest, one which is most often defined in the breach by regulatory bodies and governments who are aware that they are supposed to husband "it".

The public interest has been defined in many ways but one doubts that the definitions are exhaustive even though they do exemplify several aspects of this illusive abstraction. A colleague, Professor W.T. Stanbury, provided us with a list of over 23 definitions which he had gleaned from a variety of sources. We added several more. What emerged is a set of three basic concepts. The first is that the public interest is an aggregate of the interests of individuals in society. The second general theme is that the public interest is a balance of sector interests.

The third is that the public interest is viewed as a dynamic process for moderating the conflicting interests that inevitably exists within any society.

(footnote) A partial list of articles on this public interest include

This third general "process" definition is both persuasive and pervasive. We have accepted it as our definition of the public interest not only because it intuitively fits with our view of how the political process operates but because it also is the only logically complete concept. The aggregation of interests and the balancing of sector concepts fail to provide a way in which the aggregating and balancing come about. The "process" definition includes the latter two.

The "public" refers to all participating members of a specific society at a point in time and clearly, the public interest is culturally dependent. Its definition changes as the values of a society change. The world could not have the governmental diversity which exists if the public interest were precise, acultural, written on the Rosetta Stone of civilization for all to know and understand and apply with a judicious hand. What was the public interest in Canada in 1865 obviously is different from what that concept now means.

The public interest as a concept functions to remind the parties immediately concerned that there are considerations extending beyond their own goals or their particular rivalries or negotiations. As an aim to be articulated or an ideal to be enunciated, the public interest stands for the broad versus the narrow, the more inclusive versus the limited. The existence of a common interest is an

implicit assumption, although its more specific manifestation cannot always be readily agreed upon.

The manifestation and application of the standard of the public interest to decisions in society falls to governments and to the groups which governments, formal and informal delegate their powers. The development of an understanding of what is the public interest remains a series of individual understanding of and weighting of issues and coming up with some consensus which is at least minimally acceptable. That is, individual legislators or political parties and their members form these decisions based on their understanding of the issues involved. The groups wanting the standards to best reflect their interests and lobby to influence the understanding of the issues and the weighting of interests by the individuals involved in the process. The study of political science is the study of the representation of interests and the organizations which apply the standards of public interest.

The public interest, then, is the standard used by governments against which decisions are evaluated for their long-run good for the governed. At least this is the case in principle even though many argue such is not the case in practice. (We happen not to subscribe to the latter view). What then, differentiates the consumer from the public interest?

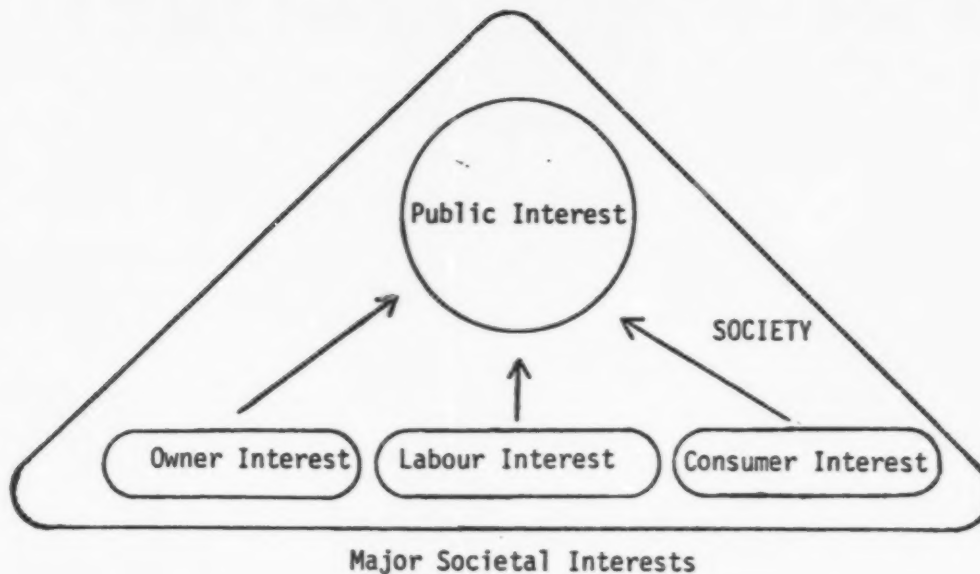
The Consumer Interest

The consumer interest has been defined as one of three major interest groups in society which make up the public interest: in a most insightful paper written in 1938, Ben Lewis analyzed consumer interest representation activities under the New Deal in the United States. In particular he analyzed the operation of the Consumers' Advisory Board of the National Recovery Administration. While his analysis is strongly economic in favour at the start the fact that we consume more than goods and services - we consume leisure, we consume an environment, we consume or dispose of our resources in various ways - caused him to expand his definition to implicitly include the consumption of a way of life and a standard of living in an environment which provides freedom of choice.*

*(Ben W. Lewis, Journal of Political Economy, Vol. XLVI, No. 1, February 1938, pp. 137-146).

A slightly modified version of Lewis' concept of the public and the consumer interest is presented in Diagram 7-1. This classification scheme permits us to dichotomize the public and the consumer interest and at the same time to show the highly interrelated relationships between the three major societal groups. It is clear that conflict among the groups, even in their aggregate forms, can be large if one group wins and another loses in any particular area of

Diagram 7-1



public interest decision. It is not surprising that within these groupings there are conflict, for example, between organized and unorganized labour.

Most individuals are not solely a consumer, nor an owner, nor a labourer. Each one of us in our varying roles is in a greater or lesser degree a member of each of the subgroups which comprise the public interest. In the works of the famous cartoon character Pogo, "We have met the enemy and they is us." Individually, it is difficult for each of us to differentiate ourselves in each of our roles. (Thorelli and E. Scott Maynes citation of UN consumer interest definition).

Having defined the consumer interest as the outcome of a process and as a major element of the public interest is not to much purpose unless we use the

definition to show how the difficulties of representing that interest are different from those representing other interests in the political process.

That is the purpose of the next section. We then proceed to evaluate the representation of the consumer interest in the Canadian political environment.

Consumer Group Characteristics

Characteristics of consumer groups, their formation, motivation, and their ability to represent consumer interests, depend on the characteristics of the individuals forming them as well as on the context in which they have to operate. Except for a few studies in motivation of volunteer organizations and public and other interest group activities most of the writing in this area is based on inductive reasoning and general observational studies. Even those studies based on data and more rigorous analysis is still suggestive rather than definitive.

In spite of these difficulties, we find the characteristics of groups of consumers which evolved from the synthesis of the ideas and instructive starting point to an analysis of representation of consumer interests in the political process. There is little doubt that as more research is done in the area that our conclusion will be modified, but it is difficult to see how the basic motivation and abilities to represent that interest will change significantly. Nor

are we sanguine about the possibility of a rapid increase in the power of consumer groups to increase the representative effectiveness in the very near future.

Consumer Role Secondary

The secondary position of an individual's role as a consumer contrasted to the primary and dominant position of the individual's producer role is fundamental to explaining the nature of the consumer interest. The individual's ability to consume is generally directly the result of that person's activities in the role or a producer. Employed individuals spend about one third of their day in their producer role. This highly focussed role can be contrasted with the diffused relatively unfocussed nature of the consuming role. This latter phenomenon is characterized by information collecting, analysis and decision-making on a wide variety of goods and services.

The secondary nature of individual's roles as consumers and the primary and dominate and often conflicting role as producers means that protecting ones' consumer interest is relegated to a subordinate position. The demands of the producer role most often come first. One reason that housewives are as active as they are in consumer organizations is that consuming and economizing on that consumption is their producer role. It is logical that they participate actively in groups that affect their producer role directly. One would expect low-income

consumers to be more active in consumer organizations than they are because of their need to economize. However, the middle and upper-middle income housewife is the prime mover in most consumer organizations and she and her spouse are the subscribers to consumer magazines and major users of consumer information. The reasons for these apparent contradictions lie in the motivation for participating in what are usually voluntary organizations and having the time to devote to consumer activities.

Individuals obviously look after their interests as consumers with different intensities and with varying deepness of success. This appears to be a function of motivation, education and the importance of a given decision to an individual. While there is a long and broad literature of scientific research about consumers and their activities in the market place, there is little information or research about motivation and capabilities of consumers in their activities in consumer organizations whose goals are changing the power relationships in the market place. There is also a paucity of information about individuals and their activities in mainly volunteer organizations in general and consumer volunteer organizations in specific.

In spite of this lack of definitive research in the area, our own and others' observations and analysis of individual activities in their consumer

role believe that the secondary nature of the consumer role is rational behavior and a prime reason for some of the other consumer group characteristics described below.

Heterogeneity of Consumer Interests

A second general characteristic of consumers as a group is their wide heterogeneity of interests. These interests are as wide as the interests in society. Contrarily, most other interest groups reflect the cohesiveness of special, more narrowly defined interests. Producers, owners of resources, groups interested in leisure time activities are illustrative of more homogenous interests. While it is true that consumer groups coalesce because of an interest in a particular concern in their roles as consumers the diffuse nature of the many consumer interests results in a group that is much less cohesive than most other interest groups. It is our observation that one of the most critical problems in Canadian consumer groups is a lack of understanding of what the consumer interest is and the ability to set operational goals on specific consumer problems. We believe the heterogeneity of consumer interests is a major reason for the problem and one not readily solved.

Impact on Group Cohesiveness

The wide and diffuse nature of the values and interests of consumers leads

to a difficulty in coalescing and maintaining groups representing consumer interests. Because of individual attitudes and the intensity of these attitudes about particular consumer problems, an individual who may be highly motivated to join in a consumer group for one particular problem is not necessarily interested in the wide range of these problems. This phenomenon has been most articulately discussed and evaluated by Mancur Olson.*

*(Mancur Olson, The Logic of Collective Action, Harvard University Press, Cambridge, 1971).

Olson defines groups, such as consumers, which are large and have heterogeneous interests as "latent groups". Such groups typically have difficulty in furthering their own interests.

"This means that there are now three separate but cumulative factors that keep larger groups from furthering their own interests. First, the larger the group, the smaller the fraction of the total group benefit any person acting in the group interest receives, and the less adequate the reward for any group-oriented action, and the farther the group falls short of getting an optimal supply of the collective good, even if it should get some. Second, since the larger the group, the smaller the share of the total benefit going to any individual, or to any (absolutely) small subset of members of the group, the less the likelihood that any small subset of the group, much less any single individual, will gain enough from getting the collective good to bear the burden of providing even a small amount of it; in other words, the larger the group the smaller the likelihood of oligopolistic interaction that might help obtain the good. Third, the larger the number of members in the group the greater the organization costs, and thus, the higher the hurdle that must be jumped before any of the collective good at all can be obtained. For these reasons, the larger the group the farther it will fall short of providing an optimal supply of a collective good, and very large groups normally will not, in the absence of coercion or separate, outside incentives, provide themselves with even minimal amounts of a collective good. (Ibid., p. 48).

The "Free-Rider" - "Public Good" Phenomenon

In addition to the problem of group cohesiveness and the incentives for large latent groups to come together in a common purpose is the "free-rider" or "public goods" phenomenon. In order to receive the benefits of many types of latent group activity one does not have to be a member of the group. Should a consumer group effectively bring about a reduction in a tariff or import quota which effectively reduces the price of imported clothing one does not have to be a member of the consumer group to obtain the benefits flowing from the group's activity. Labour groups early on experienced the difficulty of the "free-rider" problem and were effective in getting legislation foreclosed shop legislation. Monopoly powers conferred on agricultural commodity marketing boards were given, in large part, so that only members of the board received the benefits of their price setting and supply restriction activities.

Consumer or groups have not received the coercive powers to require membership in their organizations so they have experienced the difficulties of organizations whose efforts result in public goods. The prime example of this type of organization is governments, one of whose main functions are providing public goods. However, these groups have coercive powers of taxation to obtain the resources to provide these goods. There are many persons who would argue that

of governments properly represented the broad consumer interest then consumer organizations would serve little purpose. There are many who believe they serve little purpose as they are. We prefer not to make a judgement on this point but only to point out the public goods nature of the activities of consumer groups. Examples of these types of goods are in evidence throughout the book and need not be repeated here.

With what we have presented to this point it is surprising that consumer groups exist at all. Before attempting to provide some insight into the reasons for their continued existence, two other consumer group characteristics may provide a better understanding of this phenomenon called consumerism.

Value to Individual Consumer Expertise

With the wide range of products which consumers purchase, it is a physical impossibility for consumers to be well informed about each of the products which they buy. It is economically irrational for the individual consumer to perform all the testing on all or even a few technically complex products. Because of this natural consequence of the cost and value of information individual consumers in a democracy are always disadvantaged vis-a-vis producers.

For example, refrigerators have a life of about 20 years. A consumer is trying to decide between two refrigerators whose price difference is \$100. The

potential cost of the higher priced model is \$100 spread over 20 years. Not an important consideration except that the additional cost is spent now and may be a budget constraint. Even more important is the potential cost of repairs, spoiled food, high energy usage and premature replacement. The cost to an individual consumer of testing even those things which can be tested at time of purchase clearly would be much greater than any potential returns to that individual. Even so, the individual could not justify collecting historical data on product performance in use.

Contrast the consumers' problem to those of producers whose interests are usually narrow and the returns to any information about their particular narrow interest is more likely to be high. In this example, they would understand factors such as applicability and durability of various types of refrigerator motors, refrigeration systems, refrigerants, finish and durability of interior and exterior surface coatings and the like. In addition, detailed information on refrigerators would be available almost as a by-product of these narrow interests. There would be engineers in the firm to engineer the products, information sources from customers and dealers to provide feedback about product performance characteristics and similar information not available to an individual consumer.

As individuals, members of large latent interest groups, such as consumers, have a lower probability of returns to on qualities of goods and services. Therefore, not only is the maintenance by the individual of a high level of interest and knowledge in all areas of interest to consumers impossible, but it is also, in strict economic terms, irrational. The duration between purchases of a large consumer durable, such as a refrigerator is long. Once the individual has made that purchase there is little reason to continue to maintain a high level of interest for one's individual buying needs. That need immediately shifts to the next consuming decision which could be the provision of a new municipal park or the purchase of a new stereo record. This leads us to the final consumer group characteristic we wish to discuss.*

*(Anthony Downs, in his book, An Economic Theory of Democracy, Harper & Row, New York, 1957, Part III, presents a most lucid and interesting description of specific information costs and effects of becoming informed in a political situation. This analysis is transferable almost without change to the problem of consumer group information and decision making.

Advantages from Consumer Group Cooperation

The advantages to consumers for cooperation in information gathering, analysis and transmittal are large. The popularity of Consumers Reports in the United States, the Canadian Consumer in Canada, Which in England and similar types of consumer aids are an indication that a significant number of individuals

are willing to pay an amount of money for the type of information which can improve the quality or value of their purchases. Information on new products and historical experience on the performance of large durable goods is simply not available from other sources. Professor Maynes has insightfully identified the fact that producers tend to disperse information so that consumers tend to look at only one product while consumers need information gathering sources which concentrate information so that comparisons can be made.*

*(E.Scott Maynes, Decision-Making For Consumers, An Introduction to Consumer Economics, MacMillan, New York, 1976).

In both the United States and Canada it is interesting that both governments test many products which are available to consumers in the marketplace even though pressures from producer lobbying groups have been effective in keeping secret these expensive product tests in spite of the fact that they have been paid for with tax monies. This specific case is a prime example of the interests of a small minority overriding the interests of a large, latent interest group.

There is a similar advantage albeit one less frequently recognized by consumers themselves, in cooperation among consumers and consumer groups in the advocacy process. When engaging in advocacy on consumer interest subjects in the political process, in front of regulatory bodies, directly to governments,

in the press or to the public in other ways, a few knowledgeable individuals speaking for consumers can bear the cost of maintaining a high level of expertise in particular areas of consumer concern.

Since the costs of the type of analysis that complex consumer problems require are likely to be high, there are almost always large savings to cooperation in sharing data and analysis between groups and individual consumers. The simplest example of this is the exchange of information between individuals on product and service performance. Word-of-mouth communication has shown to be usually the most valued and sought source of consumer information in consumer behaviour studies over the years. In the consumerism, advocacy context being discussed here to the extent that other special interests (e.g., business, politicians) are not willing to share information and analysis with consumers, the benefits accruing to consumers organizing for advocacy purposes grow.

Contrast this specific return to consumer groups for information and expertise in the advocacy process with that of producer groups. Producer groups would be less likely to need to develop specific expertise for any given area of their interest since in the production process that expertise is required in the normal conduct of business. As an example all paint companies employ chemists with expertise on solvents, pigments, etc., important to the production

process. They also can draw upon the expertise of their suppliers to answer questions when internal expertise is lacking. To maintain a high level of expertise on this and similar areas from the consumer's point of view is expensive for any given consumer.*

*(Peter H. Schuck points out this problem by U.S. public interest advocacy groups in his "Public Interest Groups and the Policy Process," Public Administration Review, March/April 1977, p. 135).

Discussion and Summary

Some recent studies on consumer and other public interest groups help shed light on why they exist in spite of the odds and the theory which would predict otherwise. The dire predictions against consumer interest groups all depend on the motivation of the individuals comprising those groups and their ability to obtain resources for their activities. Our observations on why consumer groups operate are quite succinctly articulated by Peter Schuck's contention that a wide variety of motivations of, "Such persons may be (that of) personal pique or ambition, principled concern, ideological commitment, or simple boredom ...".*

*(Peter H. Schuck, "Public Interest Groups and the Policy Process," Public Administration Review, March/April 1977, p. 138).

In his insightful and penetrating analysis of public interest lobbying in the United States, Jeffrey Berry describes the commitment to underfinanced legislative programs by highly motivated individuals who, "are a complex

combinations of factors, such as strong ideological commitment to a cause, the appeals of life and work styles with a relative amount of freedom and opportunity and luck in finding a job."*

*(Jeffrey M. Berry, Lobbying for the People, Princeton University Press, Princeton, N.J., pp. 107-108).

The fact is that consumer groups exist is proof that there are inadequacies in Olson's theories. However, his description of the collective logic and that of Anthony Downs in some of the economic analyses of democracy are none the less useful in eliciting the characteristics of consumer groups which affect their activities in the political process. The secondary nature of most individuals' consumer role relegate representation of that interest to a position behind that of their producer roles. Because the interests of consumers are as varied as the interests in a society there is great difficulty in organizing and maintaining interest and commitment to the wide range of activities required to protect those interests. Compounding the problem is the fact that individuals do not have to join consumer groups to device the benefits of the activities - the "free rider-public goods" problem. Off-setting the above problems are the commitment of the individuals comprising the groups to their cause and the high returns to cooperative activity.

Armed with an understanding of the characteristics of consumer groups are now turn to a general discussion of interest group representation in preparation for seeing how consumers are represented in the Canadian political process.

Political Representation of the Consumer Interest

In this portion of the chapter we want to address the general problem of the representation of interests in the political process and problems specific to the representation of the consumer interest. While we focus on the Canadian situation, most of what is discussed is applicable to consumers everywhere.

The individual has difficulty protecting his or her own interests in the consuming process. The market mechanism and existing systems to redress grievances do exist. Most individuals and groups can utilize to greater degree those existing mechanisms to better redress a problem. However, the cost of obtaining restitution is often greater than any benefits that will accrue to the individual. When the point is reached that consumers cannot protect and do not have the means of redressing grievances then change in the existing system is required. This usually involves activity of a political nature for changes of any significant magnitude. These types of activities are almost always out of the realm of the resources of individuals and involve political activity of relatively large groups, the subject of this portion of the chapter.

We should recognize that consumers are generally satisfied with most of the transactions into which they enter. Studies show that for most types of activities less than 5% of all transactions bring even mild discontent to consumers. But this discontent can be significant to the individuals involved and have been at the root of group activities aimed at representing consumers' interests.

The common case in interactions between humans in society is that conflicts are solved through a mutual adjustment process. When the power differences between the individuals involved are not great or where systems have been set up to provide ostensible equity of power on both sides of transactions, whether they be economic, social or political, people solve problems of potential conflict much like people walking on a crowded street manage to meet and pass each other without colliding. The rules of conduct within the society are known and the vast multitude of interactions proceed without conflict. It is at the margin, where "partisan mutual adjustment" between the parties involved does not work, where there are large power imbalances, that a problem of resolution of conflict arises.*

*(For a discussion of the "partisan mutual adjustment" process see Charles E. Lindblom, The Intelligence of Democracy: Decision Making Through Mutual Adjustment, The Free Press, New York, 1965. There is no doubt however that a mutual adjustment process is often a very effective means of decision making and Lindblom's presentation is most insightful. However, it does not work in many areas of consumer interest representation.

Interest Group Pluralism

Interest group pluralism is the process of representing the interests of groups in the political process in democratic societies. Individuals with interests ranging from highly specific to very general come together in groups to influence governmental decisions in the direction that best serves the interests of the group.

For conflict between individuals and firms, societies have devised legal institutions to adjudicate between the interests in civil conflicts as we have discussed in the previous chapter. We also discussed the fact that interest group representation in the political process is important in changing existing laws or making new ones when the law is inadequate to solve conflict to the satisfaction of the members of society.

The general thesis behind interest group pluralism and its representation is that all groups in society ought to be able to represent their points of view before political decision-makers (a lot of interest groups activity takes place in camera). The forum may take the form of a local or national government, a regulatory agency, an individual politician, a political party or a number of other possibilities. The expectation is that a balancing of interests will result in a society which operates with the consent and in the interests of the

members of that society.

While there are many vociferous and articulate critics of the pluralism process these critics do not discard the concept that representation ought to exist in democratic societies. They criticize the way and the forums in which the interests of individuals and groups are assessed. We will return to these criticisms shortly.

Requirements for Participation

The requirements to participate in the interest group pluralism process are the resources to organize, plan, and execute the representation of an interest. It is not uncommon for groups who want to participate in the process to have to spend resources to get the right to participate.

Consumers incur organizational costs larger than the costs of more narrowly focussed special interest groups because of the large numbers of individuals to be organized and with the divergence of opinion within the group.*

*(This characteristic of all large, latent interest groups. See Olson, op. cit., pp. 46-48 and Downs, op. cit., pp. 209-210).

It normally has been the role of government to tend to the interests of latent groups because these groups are not adequately organized to protect their own interests. But, because governments have done such a poor job of representing

latent interests, these groups have gotten together despite the large organizational costs.

In addition to organization and planning costs, there are costs to collect, analyze and evaluate information and to formulate the interest group's position. This may involve a very formal, lengthy debate within the group or be informal and rapid. Finally come the costs of disseminating the information and points of view to the general public and/or decision makers to influence decisions in the direction(s) which best coincide with the interest group's goals.

Needless to say the process so briefly described is usually complex and often takes place over a considerable time period. There are professional individuals and groups whose livelihoods derive from their ability to represent interests effectively. We call them lobbyists. In the United States there are laws which control lobby activities but in Canada such control has not been perceived as necessary. Many organizations have their own staff in the national or provincial capitals, other lobbying groups appear on a regular basis, still others appear on an ad hoc basis when their interests need representation because of pending legislation or some other matter of the moment.*

*(See Presthus, op. cit., for a description of lobbying activities in the Canadian context).

Several consumer groups are permanently located in Ottawa with some

professional staff. Many of the provinces have one or two permanent staff members. Berry's observations in Washington, D.C., that public interest lobbyists tend to be younger, more committed ideologically and more satisfied with their jobs than their special interest counterparts is not at odds with our observations.* (Berry, op. cit., Chapter IV).

Much consumer is done by interested individuals and groups who are novice lobbyists and often, because of their commitment and because they are the only ones presenting the consumer point of view, tend to have influence out of proportion to their numbers and financial resources.*

*(For two interesting "how to do it" descriptions of consumer interest representation see Ellen Roseman, Phil Edmonston, Canadian Consumers' Survival Book, General Publishing Company, Don Mills, Ontario, 1977 and Andrew J. Roman, Guidebook on How to Prepare Cases for Administrative Tribunals, Consumer Association of Canada, 251 Laurier Avenue West, Ottawa, 1977).

Effectiveness of Interest Representation Activities

The effectiveness of interest representation depends on the ability to present complete, well analyzed and high quality information to decision-makers, assuming, of course, that the group has access to the decision makers. When direct access is not available or is blocked their use of the public media is used as a surrogate for direct contact with decision makers. For maximum effectiveness appeals to both decision-makers and to the public through the

press is used. The first gets information to the decision NEXUS. The second provides legitimacy, justification and pressure on the decision-makers.

The relative weight attached by decision makers to the information provided is a complex and not well understood procedure. From a scientific point of view it needs verification and research. However, we know that the major weights involve the influence, power and legitimacy of the group and the issues being considered.*

*(Robert A. Dahl, Modern Political Analysis, Prentice-Hall, Inc., Englewood Cliffs, 1963, Chapter 5).

The effectiveness of opposing interests in their countervailing interest representation also affect the relative weight attached to information and analysis. Moreover, the political ramifications of the decision on the government(s) and political parties are critical to the weighting of information.

The motivation of politicians to be re-elected and the effect which a politician believes a particular decision will have on the probability of re-election, has a major influence on the results of any interest representation. The length of time before the next election is critical. Because memories fade with time, politicians can only make politically unpopular decisions early in their terms of office. One bureaucrat interviewed in the course of our research

observed that logical government takes place during the first 450 days of any Canadian majority parliament. After that all decisions can only be rationally explained in political terms.

The influence of bureaucrats in influencing politicians is great and to understand what bureaucrats recommend one must understand their motivations. The bureaucrat has the problem of working in an organization where the organization goals may not coincide with the political goals of the politician. Just as the goals of an interest group may not completely coincide with either political or the bureaucratic goals, the purpose of members of the consumer arm of government may be that of representing consumers whose interests may be significantly different from those of the medical arm of government whose constituency is the health care system.*

*(Graham T. Allison, Essence of Decision, Little, Brown and Co., Boston, 1971, provides an insightful analysis of the motivation of politicians, bureaucrats and governments and discusses in detail a case analysis of this interesting question).

It is no wonder that political prognostication is a chancy business. The weights which the decision makers put on the various and complex considerations put before them contain within them a great range of probable outcomes. Our purpose here is not to provide a predictive model but to depict the complexity of the process representing the consumer interests, especially when these

interests are often in conflict with other powerful, well articulated interests in society. It should be clear to the most naive of observers that in The Pluralism-Representation Debate the operation of modern societies that the interests of the groups within the society should and do have direct and important effect on political decisions. However, there is genuine concern by the most knowledgeable and active participants in the process that it does not work well. (For a recent and insightful articulation and description of the failures of the Canadian system, but unfortunately with few positive prescriptions for change. see W.A.W. Neilson and J. MacPherson, eds., The Legislative Process in Canada, Institute for Research on Public Policy, Montreal, 1978, forthcoming).

Most vociferous and articulate of the critics of interest group pluralism is Theodore Lowi who charges four counts against the ideology. He says that the, "philosophy corrupts democratic government because it deranges and confuses expectation about democratic institutions," that it, "renders government impotent ... (they) are copious in plans but irresolute in planning." It, "demoralizes government, because liberal governments cannot achieve justice." And finally, "interest group liberalism corrupts democratic government in the degree to which it weakens the capacity of governments to live by democratic formalisms." *

*(Theodore J. Lowi, The End of Liberalism, W.W. Norton & Co., Inc., New York, 1969, pp. 288-291).

By his own admission his book is a polemic against the inability he perceives of democratic governments to govern because the large number of special and general interest groups who want to participate in the governing process. Lowi's concern was shared by many but his prescriptions for solutions to the problem involve greater bureaucratic control through "formalisms" which are not more than rules of law instituted by legislators. How are the politicians to be protected from interest group pluralism in legislating? One wonders whether the problems which we see in the failure of governments to plan is not our point in history. The general goals, not only of our own society in North America, but the world as a whole, are in question. The rapid growth in population, the appearance of real and finite limits on resources, and the general populace's questioning of the goals under which previous governments operated may have lead us to a 10-30 year process of restructuring the goals and objectives of societies. (A forthcoming analysis of this problem is Levi and Kupperman, Slowth, also see Ezra Mishan, The Cost of Economic Growth, and E.F. Schumacher, Small is Beautiful, for discussion of priority re-structuring).

We are not even going to attempt to answer the question of whether or not pluralism is the bugbear Lowi says it is because we see no other type of participation as an alternative for inputs to democratic governments. Dahl and

Lindblom cast the problem in a different context a quarter of a century ago.

It makes more sense to us than Lowi's histrionics. The problems as problems of governing which encompass, 1) rational calculation in putting together the information needed to look at a problem, 2) communicating between the elements involved in governmental decisions, 3) the complex number of variables involved in our difficult societal decisions and 4) the complexity of the relations among the variables which are both difficult to evaluate and whose precise relationships are difficult to estimate.*

*(Robert A. Dahl and Charles E. Lindblom, *Politics, Economics, and Welfare*, Harper & Row Publishers, Inc., New York, 1953, p. 59).

The world has become more complex in the intervening period and these problems, if anything, are heightened. Lowi and others provide stark testimony to the fact that there is little integration of government programs. Each special interest looks after itself but no one looks over the broad, general interests. It is simple to berate "politicians" until one meets a politician and finds out he or she is more concerned about the problem than is the common citizen because they face the problem daily.*

*(Neilson and MacPherson, op. cit.).

In to the midst of this very complicated process "the 'forgotten groups'

those who suffer in silence," the large latent interest groups, are cast.*

*(Olson, op. cit., p. 165).

The problems discussed above, free riders and consequent lack of resources, organizational difficulties of latent interest groups, and the competition for a hearing in the disjointed decision-making process, put consumers and consumer groups into the centre of the political cauldron. In the final section of this chapter we describe and analyze the process of representing the consumer interest in the political process in Canada.

The Canadian Political System and Consumer Interest

The Canadian system of parliamentary democracy has unique implications for representation of the consumer interest in the political process. Concentration of decision making power in cabinets at the federal and the provincial level, a system of loose federalism, historical evolution of accepted modes of behaviour, and some deep political cleavages all contribute to this uniqueness and to the particular problem of consumer interest representation.

The Governmental Decision Making System

The overriding characteristic of the political decision making system in Canada is the division of power between two groups, the politicians, and in particular the cabinet, and the senior bureaucrats through their influence

both on their minister's power and on the drafting of legislation. At the other extreme of the power continuum is the minimal effect of individual members of parliament. (MP's in the party of power have some influence on cabinet through the party caucus, but MP's in the opposition parties have relatively little power). Since the use of parliamentary committees to design legislative proposals is not used in the Canadian system individual MP's cannot achieve the power which the powerful committee system in the United States Congress conveys on their legislators.*

*(See Prestus, op. cit., and Neilson and MacPherson, op. cit.).

It is difficult to underestimate the power of the bureaucracy in influencing legislation at both the federal and provincial level. Although the balance of our discussion will focus on the federal situation the power of provincial bureaucrats follows the federal situation quite closely.*

*(Prestus, op. cit., especially Part III, provides evidence that there are regional variations but these variations are in degree rather than in substance).

The senior bureaucracy in Ottawa is composed of a highly skilled and intelligent group of administrators and policy formulators who provide a continuity which is not provided by cabinet ministers who are periodically moved amongst ministries. Their power derives from their continuity, from the resources to analyze and develop legislation, from their formal and informal information and

and power relationships with other bureaucrats, and their understanding of how to make the system work. No individual cabinet member or group of cabinet members are capable of understanding the many and complex issues which come before cabinet during the legislative session. They therefore have to depend upon bureaucrats in their ministry to provide them with well thought out legislation and for opinions and positions on legislation being introduced by other cabinet ministers.

Parliamentary committees are not brought into the legislative process until after second reading of a piece of legislation in the House of Commons. Because of the nature of the parliamentary system any major changes at that time would be an embarrassment to the government. That being the case, substantial changes in legislation sent to committee are the exception rather than the rule. Change at this point is difficult and requires major expenditures of resources. If an interest group is going to have an influence in the design of legislation it is most effective and less divisive to have it come either through the access to bureaucrats in the preparatory stage of legislation or directly to the cabinet minister who will introduce the legislation. Even though it has not received public scrutiny when it reaches Cabinet, major change to legislation at this point is highly improbable.

The logical conclusion from this type of political decision making process is that if the consumer interest is to be represented vis-a-vis other competing interest groups an organization must be set up to have those interests presented to the bureaucrats and to influential Cabinet ministers before and during the development of legislation. This is what other effective interest groups have done.*

*(Presthus, op. cit.).

Deep Socio-Political Cleavages

Overriding all Federal government decision-making are the deep political and geographic cleavages of Canadian society. Of these, the East-Central-West cleavage is central and proceeds from immense differences in economic structure, resource endowment, population density and history among the three regions. Second, the divisiveness of the two major cultures, French and English, combined with the unique character of the Canadian constitution and federalism, oftentimes completely override consumer as well as many other interest group considerations in the political process.

Lijphart has advanced the theory that deep political cleavages tend to make a country strong because the cleavages separate the large masses of these divergent interests from face to face - often politically explosive - confrontation

and allow elites representing the various interests to come to an accommodation. Prethus adopted the Lijphart model for his perceptive analysis of the Canadian interest group accommodation process. He feels the Canadian system much more closely represents the Dutch situation described by Lijphart than Lowi's pluralism. We find both Lijphart's and Prethus' analysis most convincing as well as a useful analytical framework.*

*(Arend Lijphart, The Politics of Accommodation, University of California Press, Berkeley, 1969).

The result of the Canadian political process as described by Prethus is determined by political tradeoffs by that elite group among the interests of the deep geographic and cultural cleavages. What is important for our purposes here is that the consumer interest representation process - any interest representation - can often be completely overlooked and submerged in the accommodation of the deep cleavage interests.

Interest Group Accommodation

Prethus sees interest group representation in Canada characterized by an elite group of individuals and organizations presenting information to senior bureaucrats to influential politicians (mainly but not exclusively cabinet ministers), and to the public media to develop public opinion and have their

interests represented. There is no doubt that in this representation activity, especially in the economic area but also in other areas of government concern, that a small closed clique of "old boys" who are the major influentials has characterized the Canadian system in the past.*

*(Presthus, op. cit., John Porter, The Vertical Mosaic, University of Toronto Press, 1965, and Peter C. Newman,

Much of this old boy network exists today although in the 1960s the federal government instituted a number of changes whose goal was to open up the political system to interest groups hitherto denied access. Aucoin believes that this development has "provided for more information, more expert opinion, a greater clarity in the dimensions of policy issues and a greater degree of participation in the policy-making process. Having stated this, one should point out, however, that the changes are relative in degree and, in many cases, difficult to evaluate."*

*(Peter Aucoin, "Pressure Groups and Recent Changes in the Policy-Making Process," in A. Paul Pross, ed., Pressure Group Behaviour in Canadian Politics, McGraw-Hill Ryerson Ltd., Toronto, 1975, p. 189).

The classification of Canadian interest groups presented in Table 7-1 provides the basis for discussing the representation of the consumer interest in the Canadian context. An understanding of interest group characteristics and the methods used by specific groups in the representation process help us to

Table 7-1

Classification of Canadian Interest Groups

Classification Category	Interest Group Characteristics			
	specific issue	fledgling	mature	institutionalized
age				
objectives	single narrowly defined	multiple but closely related	multiple, broadly defined and collective	multiple, broadly defined, collective and selective
organizational features	small membership/ no paid staff	membership can support small staff	alliances with other groups/staff includes professionals	extensive human and financial resources
communication with government (media-oriented)	publicity-focused protests press releases	presentation of briefs to public bodies press releases	public relations: image-building ads, press releases, publications	
communications with government (access oriented)	confrontation with politicians, officials	regular contact with officials	regular contact representation on advisory boards, staff exchanges	

Source: Adapted from A. Paul Pross, "Pressure Groups: Adaptive Instrument of Political Communication," in A. Paul Pross, ed., Pressure Group Behaviour in Canadian Politics, McGraw-Hill Ryerson, Ltd., Toronto, 1975, p. 15.

understand how the many groups relate to the government and to each other. These relationships are an important consideration for both cooperation and confrontation in the process. We will return to the classification scheme shortly.

Canadian Consumer Interest Representation

Canadian consumer interest representation and policy development at the Federal level is carried out by the government and by several consumer interest groups. The activities and the processes involved at the federal level are described below. At the provincial level similar activities occur as almost all provincial and territorial governments have departments charged with the responsibility of representing consumers in the governance process.

Government Activities

Consumer interest representation is accomplished in several ways, some overt and open to public scrutiny, many - characteristic of parliamentary systems of government - behind the scenes and left to the observer's imagination. Sometimes the veil of anonymity is drawn aside by persons involved in the process and through leaked Cabinet and interdepartmental discussion papers and the like.

The most significant advance in consumer interest representation in Canada was the establishment in 1968 of a Federal Department of Consumer and Corporate

Affairs which brought under the control of one ministerial wing the bulk of governmental activities operating for consumers. These activities include packaging and labelling, product safety, trade practices, and competition legislation. The consumer interest was to be represented in Cabinet by a Minister directly charged with the responsibility of presenting that interest to Cabinet.

Cabinet

The Minister of Consumer and Corporate Affairs represents the consumer interest as perceived by him and his department to his colleagues in Cabinet. His staff prepares and briefs the Minister on the consumer interest perspective on legislation and other matters which she/he is presenting to this top control and decision point of the Country.

Fully as important as the preparation of legislation pertinent to consumers is the evaluation of the impact of legislation proposed by the other Ministers on the consumer interest. The general interest representation process is magnified here when it is realized that the Ministry proposing legislation is expert in that particular area and unless sufficient resources are available to properly evaluate proposed legislation the Department of Consumer and Corporate Affairs and its Minister may inadvertently allow legislation and decisions to transpire without any consideration having been made of the consumer interest viewpoint.

Cabinet is where final decisions are made and where the evaluation of the interests of Canadian society take place. The economic, social and political tradeoffs, the power of the Ministers and their constituencies are weighted and the public interest is articulated.

The Cabinet also acts as the Court of last resort in many matters where public sentiment is aroused to the point that Cabinet decides, either on its own or by right to appeal established by Statute, to hear an appeal. Appeals to Cabinet are not rare but are used in exceptional cases. An important feature of Canadian Cabinet procedures is the atmosphere of great secrecy in which decisions are made. The secrecy of the process promotes much speculation and does not contribute to an understanding of the pressures involved in decisions by this group. The consumer interest is much broader, complex and more difficult to define than are the special interest. Decisions in favour of special interest groups are easier to identify and, because of the secrecy of Cabinet decisions, it is easier to point out decisions in favour of these special interests.

It is not our purpose to evaluate how well or poorly the consumer interest is represented in this complex process. We can only point out that important decisions and legislation are finally decided in the atmosphere of political judgment and secrecy characterized by Cabinet. While it may be possible to

overestimate the power of Cabinet there is little doubt that this group has the single most influential decision making role in setting out the rules under which Canadian society operates. The important decisions are, in effect, those which divide and allocate resources and benefits of Canadian society to the sub-groups of which it is comprised.

However, before decisions arrive at Cabinet level there is a complex process of evaluating and designing potential decisions and legislation. The department of the government, the party caucuses and the inputs of information from interest groups all come together to be used in the representation process.

Party Caucus

The party caucus is the group of legislators in each party who meet and provide the leaders of the party their views on legislative matters. The feelings and desires of the constituents of the members are voiced in this group by the legislators and provide feedback to the party leaders about current and planned legislation and other matters of governance. We cannot evaluate the influence of the body on the final outcome of legislation. Neither can we see agreement among legislators or scholars of Canadian politics about the effectiveness of interest representation in Caucus. All we can do is point out the fact that in the final analysis the party leader receives his right to govern from this group

and it is hard to believe it does not have an impact on the legislative process and on the positions taken by party leaders in their legislative efforts. The individual MP, government or opposition, has a very limited amount of resources to use to collect information or to perform analysis of legislation. This further exacerbates their lack of power and influence.

Interest representation groups have generally not devoted a significant proportion of their resources to influencing the general members of parliamentary caucuses. The relative influence of the back bencher is perceived as being less effective per dollar spent than the same amount spent influencing senior bureaucrats, Cabinet Ministers and public opinion.*

*(Prethus, op. cit., pp.).

Consumer interest representation activities have followed a similar pattern. Major efforts being expended on personal contacts with Ministers and bureaucrats, the individual back bencher being largely left to being influenced by his constituents and by public opinion as reflected in the public media.

The Opposition

The role of the opposition in representing any interests is mainly that of criticizing government legislation and program administration in hopes of swaying public opinion sufficiently to cause the government to change the actions

in the direction desired by the Opposition. Opposition members are much freer to voice opposition to government actions than are members of the government party; however, all parties are bound by positions taken in the caucus based on political considerations. The goal of all political parties is to gain power and, especially when an election draws closer, considerations are dominated by political estimates of the effects of action on the number of seats the party may get in the next election. Only when there is a minority government or when the party in power is very weak do opposition parties have much influence on policy.

Before leaving the legislators and their representation of the consumer interest an example of one particular consumer interest matter illustrates why that interest suffers neglect at the hands of all parties who are primarily motivated by more general political motives. The authors are intimately aware of the serious side effects of those producer controlled marketing boards that have monopoly power to set prices and restrict supply (supply management marketing boards) which result in some food prices significantly above their real cost of production. All three major political parties are curiously silent about this problem, each for very logical but different political considerations. The Liberal party draws its strength from Quebec and Ontario where supply management

marketing boards are popular with farmers and especially Quebec dairy producers. The Progressive Conservative party draws its strength from the Western provinces where the farmers are much less in agreement and often highly opposed to supply management. However, the swing seats needed to gain power are in Quebec and Ontario, and hence the P.C.s are unlikely to advocate change. The New Democratic Party has had a long standing ideology in favour of producer controlled groups; they appear to support supply management without having evaluated whether the objectives they ascribe to are consistent with supply management.*

*(The best example of this problem is the supply management system for eggs. The evaluation of control and its excess are documented in R.M.A. Loyns, Poultry Marketing Boards and Canadian Consumers, Consumer Research Council, Ottawa, 1974, mimeo; Food Prices Review Board, Report on Egg Prices and Report on Egg Prices II, Ottawa, January 1974 and August 1974; Consumers Association of Canada, Testimony on Behalf of Consumers Association of Canada Before the National Farm Products Marketing Council, Ottawa, Ontario, February 26, 1976, reproduced in altered form in National Farm Products Council, Proceedings of the Public Hearings - Canadian Egg Marketing Agency's Pricing Formula, Ottawa, in Vol. 1 at p. 14 and forward and Vol. 5; and Consumers' Association of Canada (B.C.), Brief to the Select Standing Committee on Agriculture, Vancouver, B.C., September 21, 1977.

The point to be made is that despite the costs of these agricultural seriously negating any benefits conferred on producers, governments and political parties do not necessarily represent consumer interests the way some consumers believe they should be represented. In this example political considerations dominate and override any meaningful discussion of the problem. It is for this reason that the other avenues of consumer interest representation described below are

needed if that interest is to be adequately represented in the political process.

Consumer and Corporate Affairs Canada

It is the function of members of Consumer and Corporate Affairs Canada to evaluate not only proposed legislation but all activities of government with respect to the consumer interest. An expansion of our previous discussion of this Department and its relationship with Cabinet is instructive. First, the department evaluates all proposed legislation from other departments which is destined for Cabinet. It either irons out problems in the legislation before it is introduced to Cabinet - the most common method - or briefs the Minister of Consumer and Corporate Affairs on the position he should take in Cabinet on the legislation. Cabinet also makes administrative decisions, such as levels of support for dairy subsidies, and the Department advises the Minister on the consumer interest in these matters.

Second, where there is a continuing need for representation of the consumer interest, interdepartmental committees, staffed by bureaucrats expert in the areas involved, meet on a continuing basis to thrash out policies and guidelines for legislative development and for administration of existing programmes. This takes place on subjects such as energy, transportation and food. One of the functions of the Department is to ensure that interdepartmental committees are

set up in those areas where representation of the consumer interest on a continuing basis is critical for effectively protecting that interest. Many political scientists have observed that for an interest group to affect policy and legislative development in their direction the presentation of the interest group's point of view must be injected very early in the process. Interdepartmental committees are where much legislation evolves and where many political tradeoffs occur among competing interest groups. Therefore, it is essential that the consumer interest be represented in these committees if it is to be considered in the process. Coalitions between and among departments operate in these committees as they do in other political groupings.

Finally, the consumer interest is represented in the formal and informal discussions between members of the Department and the wide range of government and near-government individuals and groups which comprise the interest representation milieu. The credibility and influence of individuals and groups in the complex network of relationships and sources of information are a function of the development of interpersonal relationships which build over time. In these ways, Consumer and Corporate Affairs Canada is the official representative of the consumer interest at the Federal government level.

Regulatory Agencies and Tribunals

Parliament delegates some of its powers to govern to regulatory agencies and tribunals such as the Canadian Transport Commission, the Canadian Radio and Television Commission, The National Energy Board, the National Farm Products Marketing Council and the Tariff Board. These bodies are usually charged with regulating in the public interest and most commonly have broad discretionary powers in their statutory mandates.

The consumer interest is always a consideration in decisions of these tribunals but there are many reasons why that interest has been poorly protected. Thus, the evidence on which tribunals' decisions are made is normally highly weighted in favour of industry interests, in part because the costs of appearing before these bodies are normally out of the reach of an individual. The procedures of appearing take on all the trappings of a court of law. Time for preparing documents is often very short and hearings often are conducted in only a few locations. The commissions, because they lack funding, have had to rely on information from the industries to be regulated, who quite naturally present their case in its best light, a light which may not elucidate consumer interest considerations.*

*(A detailed discussion of these problems is contained in the previous chapter at pages).

A recognition of this problem by the government, advocacy activities by the Consumers' Association of Canada, and research by the Canadian Consumer Council in the early 1970s led to the establishment and funding by the government of the Regulated Industries Program, whose purpose is to open up regulatory tribunals to a wider range of opinion by streamlining and simplifying the process of representation, providing funding to allow latent interests - such as consumers - to be represented on a more equitable footing to special interests and through expanding the law with respect to responsibilities of the tribunals to open themselves to public scrutiny and to accountability for their actions. This once limited means for consumer interest representation has developed into an avenue for representation which appears to be growing.*

*(See the previous chapter for a discussion of these activities).

Provincial Governments

By the middle 1970s most provinces had established a consumer portfolio. The function of the provincial consumer departments and the way in which interests are represented in provincial caucuses, regulatory tribunals and the like are similar to the federal activities described above. The diligence of consumer interest representation varies from province to province, depending on the party in power, the legislation under which the department operates and the ability

of consumers to move the government to respond to the need for representing their interest.

(Belobaba article citation)

We have not the space in this volume to analyze the provinces individually except to say that some provincial legislation leads the federal statutes and it appears that a healthy rivalry between the two levels of government exists.

Consumer Groups

The interests of consumers are represented at the Federal level by two permanent groups and by various ad hoc, special issue groups which appear from time to time in response to specific issues of importance to consumers. In addition, since the consumer interest is broad and pervasive, many groups representing citizens concerned about broad issues such as energy, environment, health and the like, represent concerns which may be classified as those of consumers in many of their activities. In this section we will discuss only the two permanent groups who represent consumers on a continuing basis, the Consumers' Association of Canada and the Public Interest Advocacy Centre.

Consumers' Association of Canada

The C.A.C. can be characterized under Pross' classification presented earlier

as a mature interest group with multiple, broadly defined and collective interests. Classifications in that table are on a continuum and few organizations will fit nicely into any classification. However, the Consumers' Association has alliances with other groups and in the past five years has had several staff professionals. Their informational activities have been directed toward providing both media and policy makers with consumer analysis of information. They have included all of the informational activities Pross uses in his classification plus various publications mentioned earlier.

What is most interesting to us in our observation of these interest group activities is the maturation of that consumer interest representation group whose organizational values were very much those characterizing "legitimate" lobbying activities in Canadian society described by Presthus. The C.A.C. was characterized by upper middle class membership, who, until recently, believed that there was something un-Canadian and not "quite right" about being a political lobby group. Coincident with the opening up of the federal government to a wider range of interests, the establishment in 1967 of a Department of Consumer and Corporate Affairs, and partial funding of the Association by the federal government of general C.A.C. activities as well as the Regulated Industries Program discussed earlier, that organization became actively lobby oriented.

The vestiges of the "not quite right" nature of political interest representation continues in the group. However, the change from a staid, quiet, do-not-make-waves posture to an active, political interest lobbying group has occurred. The group is becoming highly visible and is now a lobby group much more in tune with what has been recognized by political scientists as effective interest group representation. Regular contacts with government officials on many fronts are now maintained. There is an increasing appointment of consumer and public representatives to regulatory bodies. Media oriented information activities and formal appearances before federal and provincial governments are a matter of course, constrained only by lack of resources to do more. Consumer advocates engage in many activities to build public relations and the image of the Association.

Having said all this, the political strength of consumers in Canada is still in the trial stage and neither the government nor the Association knows how it will develop in the future. In fact, the Association exists in a chronic financial crisis situation. As soon as they press the consumer interest and pressure the government in a direction they do not want to go financial support is threatened or removed. The government, on the other hand, is wary because the C.A.C. is the only organization specifically representing the consumer

interest and the government would like more than one group representing this interest. They continue to exhort the Association to develop independent sources of funding, a goal which the Association would most like to achieve but have been unable to do. This difficulty is not surprising viewed in light of the "public goods" nature of the Association's activities. Independent C.A.C. funding for advocacy interest group representation now comes as a by-product of subscriptions to the Canadian Consumer. Government funding of the C.A.C. has varied between twenty-one and fifty-three percent over the most recent ten year period as indicated in Table 7-2. Taking out special funding for the regulated industries program government support for the general organization has varied between 21 and 44 percent of total expenditures over the past ten years.*

*(Information in this section has been collected through interviews with officers and members of the Consumers' Association of Canada, members of Consumer and Corporate Affairs Canada, Jonah Goldstein, The Consumer Movement in Canada, Occasional Papers of the Consumer Interest Study Group No. 1 - completed draft, May 1977, Consumer and Corporate Affairs Canada, Ottawa, mimeo, and Byron Rogers, Federal Government Response to Consumerism and the Consumer Movement in Canada: A Critical Review, occasional papers of the Consumer Interest Study Group No. 2, September, 1977, Consumer and Corporate Affairs Canada, Ottawa, mimeo).

Public Interest Advocacy Centre

Another group which began operation in October 1976 is the Public Interest advocacy Centre. This group acts as a client consultant providing legal advisory services and counsel to recognized public interest groups. Many of the cases to

Table 7-2
Sources of Consumers' Association of Canada Funding
1968 to 1978 (000's)

	Non-Government		Government		Total
	\$	%	\$	%	\$
1967	45,400	60	30,000	40	75,400
1968	47,700	61	30,000	39	77,700
1969	54,400	63	31,700	37	86,140
1970	63,000	56	50,000	44	113,000
1971	192,800	79	50,000	21	242,800
1972	222,000	69	100,000	31	322,000
1973	286,000	65	150,000	35	436,800
1974	371,000	59 (73)	253,800	41* (27)	624,800
1975	449,500	56 (64)	351,600	44* (36)	801,100
1976	380,000	47 (56)	430,400	53* (44)	810,400
1977	481,200	47 (57)	534,100	53* (43)	1,015,300

* These years include approximately \$116,000, \$98,000 \$131,000, \$168,000, respectively for the Regulated Industries Program which operates separately from the main association. The numbers in brackets are the percentages of non-government and government support when R.I.P. funding is subtracted from the government contribution and the total funds.

Source: Consumers' Association of Canada, Statements of Revenues and Expenditures for the appropriate years.

which that organization provides services have significant consumer interest components. That is, they are large, latent interest group problems which directly affect individuals in their consuming roles and result in redistribution and re-allocation of societal resources. The Centre is funded mainly by Consumer and Corporate Affairs Canada. Generally, assistance is provided to groups who are partially financed. Individuals are represented only when the case will expand rights in the public interest.

The goals of the government and consumer groups alike are to help individual consumers help themselves. The activities of the groups described in this section are directed towards making the system responsive to individuals who want to advance their interests as consumers. They permit a greater degree of equality in the representation of the broad range of concerns that make up the public interest. It is true that specific individuals have specialized technical knowledge and abilities which allow them to participate in representing specific areas of their interests as consumers. But even where this is the case organizational support - by government or consumer groups - will make this special ability more effective.*

*(For historical and other information on these groups see Helen Jones Dawson, "The Consumers' Association of Canada," Canadian Public Administration, Vol. 6 (March 1963), pp. 92-118 and Hans B. Thorelli and Sarah V. Thorelli, Consumer Information Handbook: Europe and North America, Praeger Publishers, New York, 1974 Chap. 7).

Summary and Conclusions

We have taken the position that the public interest is composed of the interest of consumers, labour and the owners of resources. Society must weight and adjudicate among these three interest groups through the political process. The process may be viewed as the inputs from labour and owners of resources being used to produce output from that process which is allocated to consumers. Any attempt to represent the consumer interest must ensure that in the process of allocating the output of the society reflects the interests of the individuals in their roles as consumers as well as their interests as labours and owners of resources. In the final analysis the political process allocates resources to the three major groups. In democratic societies the political process determines what proportion of the output goes to each group.

Consumers have a wide range of rights and ways in which to represent their interests. However, when the ability to represent those interests is thwarted by institutional rigidities, lack of avenues of redress, power imbalances vis-a-vis other groups, or whatever realm, the consumer has to turn to the political system to provide for adequate representation and for alteration in the balance of power.

It is immediately clear that the power of the individual is small in the

political process which legislates the rules about the relative amounts of the output of society which is allocated to the three groups comprising the public interest. The process is a political one where groups rather than individuals form the power blocks. While individual consumers may look after their own interests they can only do so under the existing rules. When these rules are changed group political activity is the major vehicle through which change is accomplished. The characteristics of groups and group behaviour in the political process is the main contribution which this chapter makes to defining and understanding the consumer interest.

Unique characteristics of consumer groups differentiate them in significant ways from the narrower special interest groups involved in the political process. The consumer role is secondary to an individual's role as a producer. The major emphasis in our lives is directed towards our producer role from which we receive our ability to consumer. Second, since all persons are consumers, consumers acting in groups have a heterogeneity of interests as wide as those of society as a whole. Because of the secondary role of consuming and the heterogeneity of interests the formation of groups to represent the consumer interest is more difficult than for coalescing groups in represent the more special interests we have as producers. Most consumers have a low intensity of

feeling on all but a few consumer problems. In addition to this, the returns to any individual acting in his or her role as consumer is most characteristically low compared to the expenditure of time and effort. All consumers receive the benefits which are the result of consumer group efforts in the consumers' interest. Therefore, there is little economic rationale for individuals to joining consumer groups to receive these benefits. In this respect consumer successes are public goods and the activity of consumer or governmental groups in expanding that interest accrue to all, not matter who expanded the effort and resources in the process.

In contrast the benefits of success of special interest groups usually accrue to the individuals who belong to the group, whether business, professional or labour groups. These special interests are, of course, broken down into many smaller representational interest groupings, and have a much narrower focus and a much narrower, more homogeneous group with much better defined goals and viewpoints to represent. Because activities by special interest groups result in direct benefits to those who are members of the group, there is a strong motivation to join the group to receive its benefits. In many cases where voluntarily membership has not been forthcoming, the special interest groups have obtained coercive legislation to ensure that all members

of the group join and contribute to interest representation. Several examples are professional bodies and labour unions whose legislation requires membership and dues contributions in order to work or practice the profession.

The number of special interest groups are legion and legislators and the public alike are bombarded with points of view reflecting these interests in their best light. All too often the broader public and consumer interests get lost in the political and legislative shuffle. This problem has elicited much concern and comment. To the minds of many, the mass of information about and the number of special interest groups has resulted in no restraint and no incentive to control continuing expansion of government. Special interest groups and politicians make tradeoffs but there is no overall adjudication of the broader public interest.

Left in the lurch are the "forgotten groups," consumers, the poor, the elderly, unorganized labour, and white-collar workers to name the larger ones. Because of the nature of the special interest groups many are pessimistic and believe that this situation will not change easily nor soon.

Consumer interest representation in Canada has developed in a way that is unique to our political system. Federal and provincial governments are similar in that political power rests mainly in the cabinet and with bureaucrats who

obtain power because of their immediate and frequent access to cabinet ministers. Deep cleavages in the federal government, east, central and west geographic divisions and the Franco-Anglo division, have led to accommodation of interests in an elite level. The elites are composed of politicians, the bureaucrats, and those representing the interest groups.

The consumer interest is represented by the party in power through the Department of Consumer and Corporate Affairs Canada through their administration of current legislation and in the drafting of new consumer legislation. The Department also performs as much of a consumer interest watchdog function on the other ministries as their budget allows. On the opposite side of the house, the opposition members articulate suggestions and criticism about both the administration of consumer legislation and the new legislation in the area. The government delegates many of its powers in husbanding the consumer and public interest to regulatory bodies and tribunals. These groups have historically been captured by the special interests which they are designed to control. This capture is a function of two things, first, they are exposed to special interests much more than to the general interests. They hear these points of views. Second, the regulatory bodies also suffer from a lack of funds to do independent analysis and have to rely on industry data as one of their prime

sources. While it appears that this situation may be changing as consumer and public interest bodies obtain broader access to the tribunals and more resources to be effective in representing broader interests it is not at all clear that this funding will continue.

Consumer groups at the federal and provincial level evolve to represent the interests of their members but because of the characteristics described previously are at a disadvantage to special interests in the interest representation process. The problem of that general interest being subsumed by the special interests will continue unless some means is found to provide adequate independent resources to represent these broader interests. While governments are supposed to represent the broad interests of society, the motivations of politicians are political and the broader interests oftentimes are subsumed by the greater interest in the next election. Whether the consumer interest will be adequately represented in the future is uncertain since it is highly dependent upon a source of funding which allows consumer interests to be represented on a basis equivalent to the representation of special interests.

The political nature of the consumer interest is indeed one of the most interesting aspects we have found in our research. The remaining task is to integrate the political dimensions of the consumer interest with its other

dimensions. This is the purpose of the final chapter.

Chapter VII

THE CONSUMER INTEREST: A DEFINITION

The literature on the consumer interest ranges over the fields of economics, marketing, consumerism, law, and sociology. In each case the perspective employed reflects the particular model of society and social behavior of the discipline. Each perspective, in its own way, helps to clarify the issues and to define the meaning of the consumer interest but nowhere is the consumer interest given precise meaning.

This final chapter briefly summarizes the concepts used in evaluating the consumer interest from previous chapters. The major portion of the chapter then presents a definition of the consumer interest and the logical support for that definition which follows from our analysis.

Consumer interests apparently are no longer confined merely to economic issues. Equal attention is being shown in the quality of life, pollution, and the indiscriminate use of limited resources. Consumerism now reflects some of the concern of critics of a materialistic, hedonistic culture which equates quality of life with the ability to acquire goods while at the same time it reflects our desire for an increasing material standard of living.

Consumerism

Consumerism is a social movement, not a theoretical or conceptual system. It draws its conclusions inductively from empirical evidence, has strong ethical motivations and a concern for protecting the rights of individuals in their roles as consumers.

Consumerism is empirical in its assessment of the economic system but idealistic in its social objectives. The consumer is viewed as the object of

potential or actual exploitation. The potential political power of consumerism has been expressed by Senator Warren G. Magnuson (Gaedeke and Etcheson) as follows.

Recent recognition of examples of abuses in the marketplace has unleashed a wave of consumer intolerance that calls for a redirection of technology and marketing practices to the satisfaction of redefined goals of society. Fulfillment of these goals implies that in the future industry will be required to submit to a social audit in addition to the traditional fiscal audit.

The consumer movement has been defined by Andreasen as the "growing struggle of a significant number of consumers outraged with the quality of the marketing system and its practices."* However, the consumer interest and its dimensions are not explained by the term consumerism nor have the dimensions of this concept been brought together elsewhere.

Economics

The economic definition of consumer sovereignty is probably the best known but it is one that has serious shortcomings. Economic theory assumes that consumers behave rationally and make their purchase decisions in such a way as to maximize their aggregate satisfaction given the resources which they have available to them. It assumes the social welfare objective of Pareto optimality which also implies economic efficiency, that is, an efficient use of resources with no better use of them possible.

There are further assumptions that consumers receive the information required to make optimal decisions, understand the information and know how to use this information to come to the optimal decision. The economic model has been criticized for years but a short summary of the criticism is useful to illustrate why the economic model, by itself, is not acceptable as a working definition

*(Alan R. Andreasen, The Disadvantaged Consumers, New York: The Free Press, 1975, p. 1).

of the consumer interest.

The perfectly rational consumer of the classic economic model does not exist. Consumers never possess perfect information and may not make effective use of the information that is available. However, economic theory does not require perfect rationality. It requires only that consumers act according to their own interests and not act knowingly against their own interests. Consumers are assumed to make rational choices within the limits of the information available and their ability and willingness to use that information. If the information is distorted or biased, as in advertising, or if essential information is withheld, consumers will make less than optimal decisions.

Access to alternative competing goods and services is a requirement of the marketplace if the consumer is to exercise free choice. Easy or convenient access to all possible products is not possible. But if the market is to provide adequate protection for the consumer interest there must be available to the consumer the opportunity to choose from a range of alternatives. A determinant of choice is a competitive marketplace. The structure of a competitive market requires many identical firms selling a homogeneous product, each unit small in relation to the total industry, each firm having free access to competitive markets for the inputs to their business and facing a free market for its output with no barriers to entry or exit; hardly the situation facing today's consumers. The theory does not assume widespread government intervention in the marketplace, the offering of incentives to new industrial development, nor the propping up of uneconomic industrial sectors of the economy. The need for a Combines Investigation Act and the current proposals to institute a new Act are a recognition that significant imperfections exist in our system. The difficulties involved in regulating economic activity are well known and highly publicized.

In the definition of the consumer interest we must recognize that there are market imperfections which may introduce social costs of significant size. One such cost is "managerial slack", that is the potential for protected managerial inefficiencies. The second is the undesirable income distribution effect of a less than competitive market structure. A third are the effects of redistribution of wealth which all societies attempt because they are not satisfied with the income distribution achieved by the marketplace.

In any definition of the consumer interest the concepts which come from economics are going to play a major role. However, just as life is not completely economic, neither is the consumer interest completely definable by the economic model.

Marketing Concept

Although the marketing concept like the economic concept dwells on the sovereignty of the consumer in the marketplace, it does not provide a definition of the consumer interest. It has not demonstrated that the consumer is sovereign nor that industry responds in a direct and predictable way to consumers' wants. Kenneth Galbraith argues that industry uses the techniques of advertising to manipulate or "manage" demand.

According to the marketing concept, a firm will provide a service ^{or} of a product that is in the consumer interest if this can be done at a profit. However, it is not certain that services or products contrary to the long-term interest of the consumers will not produce a profit. Nor is it certain that firms which choose the marketing policy which will best serve the consumer interest will make a profit. Even if a product is good (from the point of view of the consumer) it is not certain that the methods of pricing, promotion, or distribution will be in the consumer interest. It is naive, given the imperfections in the market

system, to assume that actions which maximize profits also will maximize consumer well-being.

There are very many cases where the interests of people as consumers conflict with the economic interests of other groups in society. The question becomes one of power relationships, of equity, and of how individuals want their society to operate. The question is political, economic, and social. The marketplace is only one way in which the consumer interest is reflected. We need to look further afield to adequately understand the concept.

Law

The law is a codification of the rules by which a society governs itself. Whereas the political process provides a mechanism for distilling, interpreting, and structuring social values, the law reflects the formalized definitions of those values.

In the law the word "interest" has been given definition. In the most general sense it means the "right to have the advantage accruing from anything" (Blacks, p. 950). The consumer interest is a set of rights inherent in an individual's role as a consumer. Like "human rights" they are not fundamental and irrevocable, but rights granted by society in its broadest cultural context. They are acquired by social contract, bestowed by government, modified through the political process, and administered, protected and modified by the law through the legal process.

The Behavioral Sciences

The use of the term "interest" in the behavioral science literature at times appears to mean a claim or inherent right while at other times it appears to be the basis for group formation or group solidarity. Groups are defined to be clusters of individuals with common concerns or like "interests". This

meaning is sometimes extended to equate the word "interest" with widely shared values. It is not surprising that some sociologists avoid the term in favor of other words which have a more precise meaning and fewer disturbing connotations.

The definition and understanding of the consumer interest is accomplished through the understanding of group formation and the operations of law and the political system. The factors influencing the formation of groups, the determinants of group action, and the more general problem of mechanisms for effective social choice and political action are not well understood. As one might expect, a joining together of the empiricism of the consumer movement and the theoretical constructs of the social sciences provides important insights for defining the consumer interest and for its evaluation.

THE CONSUMER INTEREST

A Definition

A definition of the consumer interest, if it is to have operational value, must include first a statement of objectives, second a statement of rights, and third a clarification of the process by which these rights will be achieved.

The goal of the consumer movement is to ensure that the rights of consumers will be effectively recognized in any public policies directed to the use of society's resources, the production of goods and services, and the distribution of income.

The rights of any member of society in the role of consumer include:

1. The right to safety.
2. The right to be informed.
3. The right to choose.
4. The right to be heard.

5. The right to a physical environment that will enhance the quality of life.

6. The maximum freedom, consistent with the rights of others, to choice of a life style.

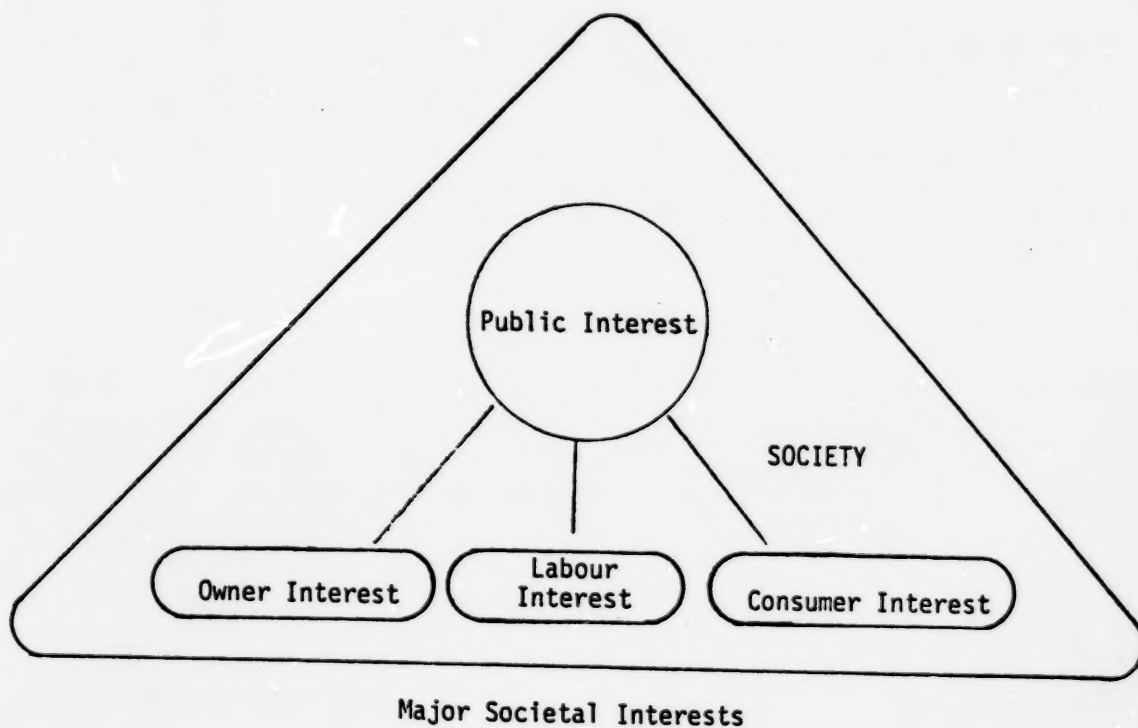
In order to protect these rights the consumer interest may be defined in terms of a political process. We must provide an institutional structure and legislation that will ensure that there is a representation of the interests of individuals in their role as consumers in the political process. This representation must be as influential in the determination of public policy as the interests of individuals in society as suppliers of labour, as the owners of capital, or as any other special interest group.

The political system has a primary responsibility for the protection of the consumer interest. The process may not work well because society is complex. Society is made up of many groups who have conflicting interests which are represented through the social, political and economic processes and in its institutions. And, last but not least, individuals who control the productive system or are in the labor force have secondary roles as consumers which may conflict with their dominant producer roles.

The Consumer Interest - An Element of the Public Interest

A distinction made 40 years ago by Ben Lewis is that the consumer interest is one of the three major elements of the public interest. Diagram 8-1 depicts this basic relationship. The function and process of government is to advance the public interest. Societies include three major economic elements of the public interest, the owner's of capital, the providers of labour, and consumers. Although not mutually exclusive, capital and labour may be viewed as the input sides and consumption as the output side of the social-economic process.

Each of the three elements of society (capital, labour, and consumers) is concerned that the government represent and protect their collective and individual interests in the generation and distribution of a standard of living. The crux of the consumer interest is the ability of governments to protect the public interest, including the broadly based interests of consumers, against the superior bargaining position of the special interests of owners of resources and labour in the distribution of resources and at the same time meet the aspirations of society.



Source: Adapted from Ben W. Lewis, *Journal of Political Economy*, Vol. No. 1, February 1938, pp. 137-146.

The Boundary Problem

The consumer interest could be defined as having a fair share of the command

over the wealth of society with the freedom to choose an individual life style. However, we must define the boundaries, that is, where the consumer interest is different from the interests of other groups. The particular consumer interest lies in ensuring that every consumer has a "fair" share of the good things our society can provide and the freedom to enjoy that chosen lifestyle subject only to the normal constraints imposed by society on individual behavior. Because individuals have multiple roles, it is not easy to isolate the uniquely consumer interest as contrasted with the interests of labour and the owners of capital. The boundary problem is further blurred by the interdependencies of the many identifiable groups in society.

The answer to the boundary question is that society has to make a judgmental decision through an appropriate institution when a determination is required. These types of decisions are the ones in which the public interest concept is invoked and where democratic societies have designed institutions to determine where the interest boundaries lie. In previous chapters of the book, especially Chapter 6 on the Law and Chapter 7 on the political process, we have discussed the necessity of articulating the consumer view so that interest is adequately weighed with the other interests in society. We will shortly summarize some of the problems associated with articulating those consumer interests.

The Distribution Question

Our definition of the consumer interest includes the concept of fairness. There is no way to avoid this. However, there is no satisfactory definition of what is fair. What is needed is a process which will ensure a fair distribution of income. In the end it encompasses questions of access to the political process where the decisions to transfer resources - or their use - from one group in society to another occur. Examples include the little things as well as the

large - from granting monopoly power to public utilities and the supervision of the use of this power to as mundane a question as to whether or not we can repair our own plumbing under a municipal building code or whether protection of an ailing industry by tariff and quota restriction will solve the industry's problems without inordinately high costs to consumers and to the public interest.

In the ideal world of perfectly competitive product and factor markets people would be paid according to what the market says their labour is worth. In economic jargon, people would receive the value of their real marginal physical product. In the abstract economic model such a principle may make sense but no society which we know of today is willing to accept the consequences of the result of that method of distribution of income. While we may accept that some individuals will receive too much, we are unwilling to accept that some others will receive too little. Income is redistributed in democratic and in undemocratic societies. Throughout history there are groups in society whose economic abilities are below the level of sustenance. Left to earn their marginal physical product, whether by reason of infirmity, age, lack of natural, physical or intellectual endowment, or whatever, some would starve. Either through informal family and/or small group welfare programs or, as is more common in modern societies, a formal welfare system we provide for a redistribution of income.

The distribution of the command over wealth in our society is determined partly through the market system and partly through the political process. The interaction of the economic, political, and social systems within any society determines the rules for the redistribution of resources. Society, through the political process, establishes a distribution which it deems to be fairer than the distribution which the market, with all its imperfections, produces. It also may redistribute income in a way that best suits those with political power.

As soon as one takes the position that the marketplace distribution of resources ought to be changed one introduces the concept of fairness and social justice. These concepts are defined by the cultural values of the moment, tempered by political reality.

The most basic aspect of the consumer interest is access to the political process to ensure that the consumer will receive a fair share of the command over wealth and will have the maximum freedom to allocate that purchasing power as he or she sees fit. The determination of how one may redistribute the resources of a society in a fairer way, through more regulation, through less special interest representation, through a negative income tax, or through fixed sales and property taxes, is an important and basic function of government. The distribution and redistribution question and the philosophy of social justice are fundamental components of the consumer interest. It can be no other way.

Consumer Interest Representation

We will avoid the temptation to name "good guys" and "bad guys" but rather concentrate on some very basic attributes of consumer groups - and other latent interest groups - which affect their ability to put forth their case in the political and legal processes called governance. Differences in the characteristics of the three groups which comprise the public interest and which result in varying inherent capabilities to have their interests represented are listed in Table 8-1. The reader who is familiar with the specific behavioural science literature will recognize that these characteristics have been variously described as transaction costs, the free rider problem, organizational costs, or public goods. They affect the ability of consumers to have their interests represented in the political process. A brief explanation of some critical dimensions of the consumer interest follow:

Table 8-1

Characteristics of Groups Comprising the Public Interest

<u>Characteristic</u>	<u>Consumers</u>	<u>Labour</u>	<u>Owners of Resources</u>
Relative Size	Large	Medium	Small
Importance of Role	Low	High	High
Diffuseness of Interest	High	Low	Low
Incentives for Group Membership	Low	High	High
Potential Returns to Individual Expertise	Low	Medium	High
Advantages from Cooperation in Expertise and Information	High	Low	Low
Advantages from Cooperation with Persons with Similar Interests	High	High	High

Size vis-a-vis Society - Compared to labour and owners of capital, consumers as a body, are at least as large as other groups in society. Everyone is a consumer.

Importance of Role - The consumer role generally is secondary to other roles. The importance to any individual of his role as a consumer is secondary to his role as a labourer or as the owner of resources. Other roles usually dominate.

Diversity of Interests - The heterogeneity of interests, aspirations and attitudes of consumers are as varied as society itself. People's interests as labourers are less diverse but still relatively wide. Owners of resources have the most coherent goals and undertake the most consistent interest group activities.

Incentives for Group Membership - Individual consumers usually do not have to be members of consumer groups to receive the benefits of the group efforts in their behalf. This "free rider" or "public good" phenomenon explains why, except in some special situations, consumer interest organizations are poorly financed compared to groups with more narrowly defined special interests. Special interest groups are smaller and characteristically group members receive directly the benefits from membership. In cases where non-members receive benefits as may be the case with labour unions and professional organizations, the groups often have used the political process to legislate compulsory membership.

Returns to Individual Expertise - The value to any individual of a high degree of expertise in any specific area of consumption is low. It is not possible to be expert in everything one consumes. One cannot maintain a high degree of expertise about buying a home, or an automobile, or all of the other products in the wide range of things we consume. On the other hand, individual consumers buy from persons whose livelihood depends on expertise in a narrow area.

Advantages from Cooperation in Expertise and Information - Because of the impossibility of being expert in all one consumes there are many potential advantages to cooperating or in having provided as a public good information about goods and services. This is particularly true for expensive, infrequently purchased goods that are difficult to evaluate before purchasing them. This buying information has been provided and supported by individuals who purchase publications such as the Canadian Consumer, Consumer Reports (U.S.) and Which? (in the United Kingdom). Information on the repair of automobile and appliances is of considerable concern to consumers but an organization and an information system to collect and disseminate such information is not well developed because these services are provided by local merchants whose capabilities are hard to assess.

Similar cooperation by special interest groups often is not as advantageous as to consumer groups if individual firms have to provide expertise in the course of business. As an example, labour unions of any size and each of the major Canadian and U.S. banks have their own economists and economic information analysis groups. There is not the same potential for economies from cooperation among these groups that there is for consumers.

Advantages from Cooperation in Political Activity -

For consumers the economies from cooperation in political activity is high whereas for labour and resources owners it is less so. Owners of resources, because of their very specific and direct interests, will take action in the political process regardless of what others with similar interests do. While this is less true for labour groups, one observes log rolling and other types of cooperation amongst labour groups. One sees the same phenomenon among farm, trade, and professional groups.

The characteristics just enumerated provide the evidence that consumers as a group differ markedly in their needs for representation from other groups which comprise the public interest. Consumer groups have characteristics close to the public interest but differ markedly in one respect. The protection of the public interest requires the balancing of the interests of all groups. In the final analysis this balancing is done by legally coercive bodies, be they the Parliament of Canada, the National Energy Board, ~~or~~ the Winnipeg City Council. Narrow, special interests are better able to represent their interests because they are better able to assemble resources and to present their cases. The group characteristics of consumers result in consumers being under-represented, vis-a-vis the other two groups. Examples confirming this under-representation - Olson, Downs, Presthus, Stanbury and from our own research - have been presented in the previous chapters.

An Opinion

It is our opinion that the rise of consumerism stems in part from the frustration of being under-represented in the politic process. Politicians, especially above the municipal levels, have contributed to aspiration levels that are impossible to satisfy. At the same time politicians have been unable or unwilling to control the growth of government. Many believe this has led to a reduction in the legitimacy of governments. Our opinion is not unique but has developed from our research and is highly influenced by the framework provided by others through which we have made our observations. A brief restatement of the governing processes which led to this conclusion - stated in much greater detail in previous chapters - precedes our prescriptions for policy makers

The Political Process

The representation of the many interests in society, most aptly described by Theodore Lowi in The End of Liberalism, has resulted in governments unable to plan except in the very short term. They are able to respond to special interests only on an ad hoc basis. Lowi's conclusion that governments are unable to govern in the long run interests of a country is widely held by policy makers and academics alike. What is equally significant is that we discovered a widespread feeling that, given pluralism and political realities, change will be almost impossible. (See as a Canadian example, W. Neilson and al., The Legislative Process in Canada, Institute for Research on Public Policy, Montreal, forthcoming, especially articles). This situation, if one accepts that it exists, is the result of how governments are organized, how groups operate, and how politicians, bureaucrats and interest groups are motivated and respond to incentives. The organization of government along functional lines results in an organization along special interest lines. Health care, industry, trade and commerce, agriculture, forestry, and the many other interest group organizations in government lead to each bureaucratic and ministerial grouping to serve the special interests of their particular narrow special interest.

The result has been log-rolling among politicians and special interest groups to have their interests looked after with little or no pressure to control the overall direction of government activities and growth. This does not mean that governments have overlooked completely the overall public interest and the large, broadly-based interest groups such as consumers. What it does mean is that at the margin, special interest groups have had more effect on decisions which set the rules under which society operates and the broadly based interests have

been under-represented. The under-representation is the result of characteristics of large broad interest groups - described in some detail above - and the characteristics of pluralistic governments.

The first reason for "over-representation" of special interests is that there are so many more of them than there are groups representing broad, general interests. With frequent presentations of the special interests to a ministry or department charged with a responsibility for narrowly defined constituencies, over-representation of these narrow interests is predictable.

Second, special interests are differentiable by the electorate and politicians. In contrast, broad interests affect everyone and advancing these interests result in much less specific political advantage. The individual when casting a vote recognizes and responds more directly to political activity favourable to his or her special interests than to the advancement of the consumer and similar broad interests.

What happens is that the broad interests are served by governments early in their terms of office when politicians are free from political pressures and have more time to placate the special interests whose advantages may be eroded by public interest considerations. Generally unpopular decisions are more easily made early in the terms of office for similar reasons. As election time approaches special interests are served at the expense of consumer and other broadly-based interests because the major political consideration of politicians at that time is to get re-elected. The weights given to the various interests in this political time framework is necessary to comprehending consumer interest policy development which is the subject of this final portion of the book.

It is all too easy to believe that the consumer interest is almost never

served by political processes if it is viewed in too narrow a time framework. Democratic, representative governments must always be serving a variety of often conflicting interests. Almost never are they allowed the luxury of considering only the broad, general interests or only a very few special interests. Their job is a political one (i.e. it involves the management of conflicting values) which means decision makers weigh and react to the various interests in society.

It should be obvious that the representation of any interest cannot be left only to politicians since their evaluation and reaction to that interest will be biased by their perceptions of what is required to be reelected. We must evaluate the consumer interest in terms of social and economic aspects as well as in terms of political realities. Because of this fact it is not possible nor even desirable that we leave only to government the furtherance of consumer interests. Similarly, the nature of the consumer interest described previously is such that its adequate representation in the market-place and in the political process requires consumer policies which take account of its special characteristics and which facilitates its representation.. It is with these considerations in mind that we proceed to provide some guidelines for public policy makers.

Prescriptions for Policy Makers

This section is designed to provide some guidance for consumer policy makers which comes from our research into the definition and dimensions of the consumer interest. We do not have the final answer for all the problems but we take what comfort we can from the fact that legislators in the western world in general and in Canada specifically have no definitive answers either. What we can provide is a framework against which consumer policy

makers can evaluate legislation and investigate solutions to problems which arise for consumers in an increasingly complex world. This framework also may be used by consumer activists to help structure their goals and their prescriptions to further the consumer interest.

Framework for Consumer Policy

The framework for consumer policy provided here sets out the major policy thrusts which we feel will lead to a system more responsive to the consumer interests. The recommendations arise from the concerns which consumers as individuals and as groups have about their ability to represent their own rights. All of the framework considerations are being practiced in greater or lesser degree but changes are almost always matters of degree rather than the initiation of completely new ideas. Even though changes may be obviously needed they are frequently overlooked by policy makers, consumer advocates and consumers themselves.

Facilitate Consumers Helping Themselves

The most successful policies to advance the consumer interest are those which allow the individual who feels aggrieved to take action to redress the wrong. Where the marketplace operates and where there is adequate choice, this is done by individuals refusing custom to firms which do not satisfy their needs. Retailers with their policy of satisfaction or your money refunded constitute the first line of defence for handling consumer complaints. However, conflicts arising over quality and performance of goods and services more often than not favour sellers rather than individual consumers. Faced with large bureaucracies, public or private - governments, public utilities, and large oligopolistic businesses - it is often uneconomic and impractical for

consumers to rectify all but the most obvious product/service defects by complaints to retailers or manufacturers.

1. Self Help Before the Fact

Education and information to improve consumer decisions can reduce frustration and dissatisfaction before it starts. By providing consumers with the means to evaluate their consumption alternatives before purchase not only will there be less dissatisfaction but individuals will be forced to take responsibility for having made a poor choice. Restrictions on false and misleading advertising have reduced unrealistic expectations of product performance. Wide dissemination of information on "dangerous" toys and "dangerous" food products are illustrations of one extreme end of a possible spectrum of product/service information. Groups of consumers go so far as to purchase information to assist them in their buying decisions. Wide dissemination of effective information to facilitate better consumer decisions is a cornerstone of present and future policy considerations.

We have been arguing for an advocacy position for the consumer interest - the operational implementation of the "rights" of consumers. It is not a sufficient rebuttal to this advocacy position to provide cases of consumers who have made stupid decisions in spite of having adequate information to have made intelligent decisions. We have seen no research showing how well and how often consumers make good choices. A body of research and understanding of how consumers use and misuse information is still in its embryo stages. We provided a discussion of many of these problems in Chapter 4.

Decision making among complex alternatives, such as buying a Datsun or a Pinto, requires factual information and the relevant information - even that buried in the manufacturer's files. The ability to understand and to use that

information is difficult. The use of the information necessary to make good decisions commonly requires significant analysis and the restructuring of that information to be useful. Research is only now discovering the most effective ways of presenting information so that it is useful in consumer decision making. Even the most politically naive will recognize the difficulties and the political pressures on policy makers who may want to facilitate presentation at the point of sale of pre-analyzed information which presents the products of some companies in less than the most positive light.

Consumer satisfaction with their buying decisions is the obvious goal of consumer policy. Policies which help consumers improve their individual decisions are the first and most important guideline for consumer policy. Policy which furthers this goal is not as easy to come by as it appears for reasons cited above but that only serves to increase the challenge of the task.

2. Self Help After the Fact

Policies and program which provide individuals with effective means for self help is the second recommendation for policy makers. If the system is to be free to adjust to changing conditions and to changing demands on it, honest errors and mistakes affecting sellers and buyers will occur. Deceit and dishonesty exist - both on the selling and the buying sides - and therefore there is a need for adequate systems for redress.

That systems are presently inadequate and ineffective is obvious from

the number of legitimate problems consumers bring to government and private agencies established to provide assistance.

Many of the large consumer products companies have established company

consumer redress mechanisms which work for a large majority of the problems. However, for problems with firms who do not have these internal redress systems, for problems where legitimate disagreement remains, for disagreements with governments (who provide many consumer goods and services), for cases where it is impractical and/or uneconomic for individuals to press for individual redress the need for more effective redress systems remains. The government redress systems now available and noted briefly in Chapter 5 are expensive. Whether or not we can reduce their cost there is little doubt that new ways to improve the redress process should be considered and that these types of considerations should be a guideline for policy development.

Means to help consumers to help themselves should make less use of some parts and more use of other parts of the legal system. Less use is indicated for a large volume of consumer problems where we need relatively simple, informal arbitration and adjudication systems without all the formal trappings, rules of procedure, and rules of evidence present in the law. Small claims courts are of limited use in this regard because of their formal nature and difficulty of access. These courts are used mainly as small debt collection agencies by businesses even though the occasional consumer is able to obtain redress.

More use of the legal system is needed to expand the use of class actions in Canada. The use of this potentially effective and useful advice for groups of consumers to obtain redress through cooperative action in the courts is being expanded in the United States. Despite government attempts to expand its use for Canadian consumers it still can be used only in a few, very circumscribed situations. Policies which encourage the legal system to deal

more effectively with problems deserving this attention on the one side and which use less of the formalities of the law on the other side are required.

3. Help Business and Government Understand Consumer Problems

Education, information, and understanding of the consumer perspective and the problems of consumers by those providing goods and services, business and governments - can decrease the number of problems experienced by consumers. Activities by provincial and federal governments in Canada to educate businessmen and the provision of laws designed to protect consumers has reduced the incidence of false and misleading advertisements and increased packaging and product information. Information activities of consumer groups expand the understanding of consumer concerns and reduce the number of conflict situations. When business and government recognize areas of consumer concern many problems can be solved or largely mitigated before the fact.

The three general policy considerations, to help consumers help themselves, to facilitate self help to redress consumer problems, and to reduce potential problems through expanding the understanding of consumer problems by business and government are all measures to make the marketplace work better. Effective planning can reduce the occurrence of problems. These are policy considerations which, if they could facilitate individual self interest on both sides of the marketplace to exert itself, would reduce the need for intervention by government. While the need for intervention is never going to be eliminated we feel that consumer policy and consumer satisfaction with the results of that policy will be improved if individuals are adequately equipped to solve their own consumer problems through systems

which allow them to bargain on an equitable basis with the other actors in the consumption scenario.

Making the marketplace work more effectively is not the sole answer to consumer concerns nor can policies which improve its operation come about if other policy directions are not taken. Those additional concerns have a direct bearing on whether or not the policies which help improve the marketplace will develop.

Facilitate Consumer Interest Representation

Our definition of the consumer interest requires the establishment of procedures and programs which will facilitate the representation of consumer interests in the political (and regulatory) process. Improved understanding of the range and complexity of consumer problems provide a base against which policy can be evaluated. The consumer group characteristics outlined earlier suggest that it will be difficult to achieve a representation of the consumer interest on a basis of equality with other special interests. However, effective representation is essential. Therefore, some assistance in terms of budgetary resources, technical aid and the like can ensure that legitimate consumer concerns will be considered in political decision making. If this assistance is not forthcoming the interests of consumers will continue to be underrepresented

in the policy-making process. This recommendation is as appropriate for business as it is for government. Too often both these groups have designed policies with inadequate information and understanding of consumer concerns and been faced with undesirable and unnecessary consequences as a result.

Facilitate Consumer Problem Identification

There is woefully inadequate understanding of the magnitude and frequency of consumer problems. The diffuse nature of the consumption process contributes to a lack of awareness of problem situations by governments, manufacturers, and consumers themselves. Very often just the recognition of a problem results in rapid solution. In the cases where solutions to problems are complex, an understanding of a problem is a significant step towards its solution.

General Planning and Policy Prescriptions

The following recommendations are general policy planning considerations presented in a form specific to the needs of consumer policy. While they are not new they are so frequently overlooked that their restatement is needed.

1. Specify Goals of Consumer Policy

In setting consumer policy care should be taken to specify precisely the goals of the proposed policy and the resources and procedures necessary to accomplish those goals. Consultation with those directly affected by policies during the development and implementation stages is a prerequisite for success. This is a general planning concern not specifically directed to consumers but no less vital to the development of effective and workable consumer policy. The requirements of a regulatory tribunal to provide adequate power and resources to regulate in the public and consumer interest can easily

be evaluated before the fact from previous experience in this area. The narrow interests of the regulated must not dominate the legislation. In a similar vein consumers advocating governmental or business intervention to change marketplace behaviour need to be specific in specifying the goals of such intervention. All too often the lack of specificity of goals has resulted in policies and legislation which do not solve the problems for which they were intended to leave consumers no better, and often worse off, than if no legislation existed.

2. Recognize Policy Limitations

All parties concerned about the consumer interest representation process should recognize the practical limitations of what governments, consumer groups, and individuals in their consumer roles can expect to gain from any policy. Because of the nature of the consumer interest governments should not expect that, in and of themselves, individual consumers or consumer groups can represent their interests the way a narrow special interest group can. Neither should consumers expect that all of their problems can be solved by business or government. A thorough understanding of the limitations of public policy will help to clarify the issues and decrease conflict.

The value of objective analyses of consumer areas of concern, analyses which set out the range of the problems, the alternative ways of approaching their solution, and the costs and benefits of those alternatives, cannot be overstated. Our experience in the consumer area and the experience of policy analysts in other areas, continue to reinforce the value of study and specification in policy development and problem solution.

3. System Responsive to Change

The final element in the policy framework is the goal of designing policies which recognize the evolutionary nature of consumer policy in order to facilitate changes in policies as they develop. This recommendation is aimed mainly at institutions designed by government to protect the consumer interest. Too often such institutions become moribund. Too often also, they remain in existence and need a special administrative push for a decent burial or a critical reevaluation and rejuvenation if they are to be useful. The Federal Trade Commission in the United States has recently gone through such a rejuvenation. The Canadian Transport Commission is badly in need of one and it appears that the Canadian Radio and Television Commission is in the midst of such a reevaluation.

The types of activities contributing to a responsiveness to change include hearings and conferences (specifically devoted to evaluating goals and the institution's effectiveness in meeting those goals), independent sources of funds to provide objective evaluations of policies, laws and institutions, and statutory provisions requiring an institutional justification of operations. In all the cases cited above sufficient resources to develop points of view other than those of the institution being evaluated are required if the evaluations are to be effective and not just be a "mutual admiration society" between regulated and regulator or bureaucrat and politician.

The framework for consumer policy presented here contains some recommendations specific to the consumer interest representation process and some recommendations which put general policy and planning prescriptions into the consumer policy context. None of the prescriptions is new or controversial since to a greater or lesser degree they are the goals of existing

consumer policies. In spite of this we believe that greater application of the principles involved will increase the effectiveness of policies to protect and expand consumer interests.

It is not a function of this book to judge the effectiveness of the representation of the consumer interest but a brief summary statement can put the future of that representation into perspective. An evaluation of the consumer interest representation in Canada is the subject of another volume in the process of preparation. That volume will use the framework provided here and the understanding of the consumer interest developed in this book for its analysis of that representation.

Prognosis for Consumers

The representation of the consumer interest and the expansion of consumer rights has and will continue to be evolutionary rather than revolutionary. Most democratic political processes are incremental in their effects. Over the past several decades there has been an expansion of the understanding of the consumer interest and a gradual but steady shift from the concept of "buyer beware" to "seller beware" in the marketplace. There has been an evolution in the law on a wide number of consumer related concerns. Trade practice legislation both on false and deceptive pricing and advertising and on warranties and guarantees, whether explicit or implied, have expanded consumers' rights in the buying process. A general understanding by the media of consumer problems has helped highlight areas of concern.

The establishment of consumer departments at many levels of government indicate a recognition of the need specifically to represent this interest vis-a-vis other interest groups as a legitimate concern of government. There has been expanded access to the courts and to regulatory tribunals. There also has

been expansion of the right of consumers to be heard in front of these agencies of social control. While we neither had the time nor the resources for an inventory of the developments in consumer rights it is apparent that they have expanded considerably in the last several decades.

Credit for the expansion of these rights and interests of consumers cannot be taken by a single individual group or government. In North America and Great Britain the major impetus for expansion of these rights has been from individuals and consumer groups who have worked to have the interests of consumers better represented by governments.

These activities have laid the ground work and provided the basis for an expansion of rights in the courts, in legislation, and in the evolution of governmental departments representing consumer interests. Governments have been open to suggestions in these regards but it is doubtful that they would have acted on their own if the concerns of consumers with the eroding of their rights had not been highlighted and lobbied for by interested citizens.

The road so far has not been smooth nor the process without rancor and conflict. This is to be expected when one group in a society is attempting to increase its economic and political power and its share of society's output. In addition, consumer groups are often in conflict with politicians and bureaucrats when their efforts to have the consumer interest represented adds one more interest to placate in the complex process of governing. The question which remains is, what is the prognosis of the future of the consumer interest and its representation?

We find it difficult to read the conflicting signals about the future direction of consumer interest representation. On the negative side is the recent failure of congressional approval of a bill to institute a Consumer

Protection Agency in the United States. In a similar vein it appears that the Federal government in Canada is removing support from consumer interest groups.*

* (Ellen Roseman, "wither the consumer interest and the consumer protection agency," The Toronto Star, April 15, 1978, and "Consumer Group must find other funding, Allmand says," The Vancouver Sun, June 13, 1978). On the other hand, provincial governments in Canada appear to be committed to continuing support for provincial consumer groups. The Quebec government has contributed funds to representing Quebec consumers in front of the Canadian Radio and Television Commission during the 1978 Bell Telephone hearings. The British Columbia Ministry of Consumer and Corporate Affairs has instituted a program to evaluate the competence and honesty of automobile and television repair personnel (but have had the funds to carry out these programs sliced).*

*(Evans-Atkinson, "Rafe's raiders drive their point home," The Vancouver Sun, June 15, 1978).

A characteristic of the consumer movement in the United States which appears to be repeating itself in Canada is that some of the more articulate and capable consumer advocates are being taken into government to internalize the advocacy in government. If these advocates continue to represent the consumer interest in their internal government roles then perhaps there will be less need for external representation.

However, because of the very nature of the consumer interest, its secondary role, its diffuseness, and the difficulty of representing that interest vis-a-vis special interests, the consumer interest will always tend to be under-represented in the political process. The political winds will determine whether or not the representation of consumer interests in the political process will operate at a level sufficient to effectively counteract undue political power of special interests. Finally, if consumers are effective in having their

interests represented, and if the pinch is felt by special interest groups and by governments, we can expect these broad interests to be the target of concentrated negative publicity and suffer as a result. Whatever happens, we hope that the understanding which this book provides about the consumer interest and its problems of representation will result in a clearer view of whose interests are gaining and whose are losing in the fascinating process of governance.

